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CIS

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR 1991

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES

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PART 4

THE JUDICIARY

Page

United States Supreme Court:

Salaries and Expenses 1
Care of the Building and Grounds 25
United States Court of International Trade 43
United States Courts of Appeals for the Federal Circuit 63
Courts of Appeals, District Courts and Other Judicial Services 85
Administrative Office of the U.S. Courts 341
Federal Judicial Center 391
United States Sentencing Commission 423

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE
28-467 O
WASHINGTON : 1990

H181-28

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR 1991

MONDAY, FEBRUARY 5, 1990.

UNITED STATES SUPREME COURT

SALARIES AND EXPENSES

WITNESSES

JUSTICE SANDRA DAY O'CONNOR, SUPREME COURT OF THE UNITED STATES

JUSTICE ANTONIN SCALIA, SUPREME COURT OF THE UNITED STATES

ALFRED WONG, MARSHAL OF THE COURT, SUPREME COURT OF THE UNITED STATES

TONY DONNELLY, DIRECTOR OF BUDGET AND PERSONNEL, SUPREME COURT OF THE UNITED STATES

TONI HOUSE, PUBLIC INFORMATION OFFICER

INTRODUCTION

Mr. SMITH. The hearing will come to order.

Today we start the hearings on the Judiciary with the Supreme Court. The FY 1991 budget request for the Supreme Court is $19,224,000. Last year the Supreme Court received $17,434,000 against a request of $17,313,000. The total for the Judiciary for FY 1991 is $2,045,214,000 against the 1990 appropriation of $1,678,477,000. We will insert the budget justifications submitted in support of this request at this point in the record.

[The budget justification material follows:]

SUPREME COURT OF THE UNITED STATES

SUMMARY STATEMENT RELATING APPROPRIATION ESTIMATES TO CURRENT APPROPRIATION

Appropriated, 1990	$21,834,000
Sequestered pursuant to P.L. 99-177	- 31,000
Proposed supplemental for pay costs	63,000
Budget Authority, 1990	$21,866,000

Requirements

	1989 Budget Authority	1990 Estimate	Increase or Decrease
Salaries and expenses	$17,497,000	$19,224,000	$+ 1,727,000
Care of the building and grounds	4,369,000	3,453,000	- 916,000
Totals	$21,866,000	$22,677,000	$+ 811,000

Net Increase, 1990 over 1991	811,000
Estimate, 1991	$22,677,000

STATEMENT SHOWING CASES FILED EACH TERM; CASES TERMINATED AND CARRIED OVER TO NEXT TERM

(October Term 1989 - Corresponds with Fiscal Year 1990)

Term	Case Filings During Term	Carried Over From Prior Term	Total Cases on Docket	Breakdown of Cases on Docket (Orig. & Paid)	Total Cases (In Forma Pauperis)	Total Cases Disposed	Not Disposed
1970	3419	793	4212	1923	2289	3422	790
1975	3940	821	4761	2366	2395	3806	955
1980	4174	970	5144	2773	2371	4255	889
1981	4422	889	5311	2957	2354	4433	878
1982	4201	878	5079	2727	2352	4009	1070
1983	4222	878	5100	2706	2394	4131	969
1984	4047	959	5006	2590	2416	4261	745
1985	4413	745	5158	2581	2577	4290	868
1986	4240	883	5123	2559	2564	4349	774
1987	4493	775	5268	2593	2675	4387	881
1988	4776	881	5657	2599	3058	4828	828
1989*	4846	828	5674	2492	3184	4906	768

STATEMENT SHOWING CASES ARGUED, DISPOSED OF BY OPINION AND CASES REVIEWED AND DECIDED WITHOUT ARGUMENT DURING TERM OF COURT

	Cases Granted			
Term	Argued This Term	Disposed of by Opinion	Cases Reviewed and Decided without Argument During Term	Cases Granted Review During Term
1970	151	148	192	161
1975	179	176	184	172
1980	154	152	122	183
1981	184	170	126	201
1982	183	174	119	179
1983	184	174	81	149
1984	175	159	73	185
1985	171	171	106	187
1986	175	174	109	167
1987	167	160	87	180
1988	170	156	107	147
1989*	144	138	60	115

*Projection for Full Term (as of February 5, 1990)

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES
SALARIES AND EXPENSES

Summary of Requirements

Appropriation 1990 (enacted to date)	$17,434,000
Sequestered pursuant to P.L. 99-177	...
Proposed supplemental for pay costs	63,000
Budget Authority, 1990	$17,497,000
1991 budget estimate	19,224,000
Proposed increase	$ 1,727,000

APPROPRIATION LANGUAGE

Supreme Court of the United States

SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds, including purchase or hire, driving, maintenance and operation of an automobile for the Chief Justice, not to exceed $10,000 for the purpose of transporting Associate Justices, and hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344, $17,434,000, of which not to exceed $15,000 shall be available for the procurement of an oil portrait of former Chief Justice Warren E. Burger to be placed in the United States Supreme Court Building; not to exceed $10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve, $19,224,000

SUPREME COURT OF THE UNITED STATES
SALARIES AND EXPENSES
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.			1991 Request	
			Perm. Pos.	Amount
		Summary of Changes:		
		Appropriation 1990 (enacted to date)	319	$17,434
		Sequestered pursuant to P.L. 99-177	...	...
		Proposed supplemental for pay costs	...	+ 63
		Budget Authority, 1990	319	$17,497
		Adjustments to base and built-in changes:		
1.8	1.	Restoration of amount sequestered pursuant to P.L. 99-177	...	...
1.8	2.	Increase attributable to FY 1990 mandated pay and health benefits increases	...	+ 377
1.8	3.	Increased pay costs for FY 1991 (9 months of 25% increase for Senior Officials)	...	+ 336
1.8	4.	Annualization of FY 1990 increased pay costs	...	+ 149
1.8	5.	Increased Social Security Taxes	...	+ 8
1.9	6.	Increased costs of Federal Employees Retirement System	...	+ 124
1.9	7.	Cost of within-grade salary advancements	...	+ 211
1.9	8.	Extra compensable day	...	+ 50
1.9	9.	Promotions and merit increases	...	+ 100
1.9	10.	Increased pay costs for FY 1991 (9 months of 3.5% COLA)	...	+ 375
1.9	11.	Other increases in contract rates and charges for services, supplies and equipment	...	+ 83
1.10	12.	Postage increase	...	+ 18
1.10	13.	Federal Telecommunications Service increase	...	+ 11
1.10	14.	Increased printing costs	...	+ 36
1.10	15.	Increased cost of lawbook accessions and continuations	...	+ 34
		Subtotal	...	+ 1,912

Page No.	Resources for workload increases and improvements in services:		
1.10	16. Computer systems program	...	+ 100
	17. Compact shelving for the Supreme Court Library	...	- 110
	18. Atex disk drive and software upgrade	...	- 120
	19. Atex multi-purpose terminal conversion	...	- 40
	20. Oil portrait of Retired Chief Justice Burger	...	- 15
	Subtotal	...	- 185
	Total net increases, requested	...	+ 1,727
	Total appropriation requested, 1991	319	$19,224

SUPREME COURT OF THE UNITED STATES
SALARIES AND EXPENSES

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Salaries and expenses	319	$17,497	319	$19,409	319	$19,224	...	$- 185

Object Classification
(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$11,672	$13,031	$+1,359
12	Personnel benefits	2,537	2,980	+ 443
13	Benefits for former personnel	27	27	...
21	Travel and transportation of persons	53	56	+ 3
22	Transportation of things	17	18	+ 1
23	Communications, utilities, and miscellaneous charges	517	567	+ 50
24	Printing and reproduction	827	887	+ 60
25	Other services	587	604	+ 17
26	Supplies and materials	385	351	- 34
31	Equipment	875	703	- 172
	Total Obligations	$17,497	$19,224	$+1,727

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$17,497	$19,224	$+ 1,727
Obligated balance, start of year	4,794	5,350	+ 556
Obligated balance, end of year	- 5,350	- 6,008	- 658
Outlays	$16,941	$18,566	$+ 1,625

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	319	319	...
Total compensable workyears:			
Full-time equivalent employment	335	340	+ 5
Full-time equivalent of overtime and holiday hours	...	...	...

General Statement

This appropriation is for the salaries of the Chief Justice, eight Associate Justices, the Administrative Assistant to the Chief Justice, the four Officers of the Court and the employees of the Supreme Court of the United States, and for the necessary operating expenses of the Court. This includes printing and binding of the Supreme Court reports, books for the Supreme Court and miscellaneous expenses for fiscal year 1991. Reference to basic statutory authorities is contained in the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

An appropriation of $19,224,000 is requested for 1991, which represents an increase of $1,959,000 over the appropriation for 1990.

Justification of Changes

Item 1. Restoration of Amount Sequestered in Fiscal Year 1990 ~~($232,000)~~

~~In accordance with the sequestration procedures authorized in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) and the Reconciliation Act of 1989 (P.L. 101-239), a reduction of 1.4 percent in non-exempt budget authority was imposed in fiscal year 1990. The sum of $232,000 has been included in this request to restore the sequestered amount to the appropriation base.~~

Item 2. Increased pay costs for FY 1990 including health benefits ($377,000)

In accordance with the P.L. 101-136, federal employees will receive a 3.6 percent pay increase, effective first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $486,000. The sum of $377,000 is requested as an adjustment to base for FY 1991 ($226,000 for personnel compensation and $111,000 for related benefits). This amount represents increased pay costs and benefits for the period January 1 to September 30, 1990 resulting form the 3.6 percent pay increase plus a projected 13.3 percent increase in health benefit costs.

Item 3. Increased pay costs for FY 1991 ($336,000)

In accordance with P.L. 101-194, the salaries of Article III judges and Executive Schedule employees will increase by 25 percent effective January 1, 1991. The sum of $336,000 is requested as an adjustment to base for FY 1991 ($325,000 for personnel compensation and $11,000 for related benefits). This amount represents increased pay cost and benefits for the period of January 1, 1991 thru September 30, 1991.

Item 4. Annualization of FY 1990 increased pay costs ($149,000)

The sum of $149,000 is requested for fiscal year 1991, representing the difference between the full and part-year cost of the January, 1990 pay and health benefits increase for all federal employees ($112,000 for personnel compensation and $37,000 for related benefits).

Item 5. Annualization of FY 1990 Social Security Costs ($8,000)

The sum of $8,000 is requested for increases in social security taxes due to the increases in the rate and cap. The amount requested represents the three months cost of increases that are effective in January 1990. The wage base will increase from $48,000 to $50,700 and the tax rate applied will increase from 7.51 percent to 7.65 percent.

Item 6. Federal Employees Retirement System Increased Costs ($124,000)

All federal employees hired after December 31, 1983 are covered under the Federal Employees REtirement System. In addition, as positions filled by Civil Service Retirement System employees become vacant, they will most likely be filled with employees under the F.E.R.S. For fiscal year 1990, this turnover is estimated to increase the Supreme Court's costs at a rate of 19 percent. This percentage increase applies to the total F.E.R.S. related costs which include: F.E.R.S. contributions, Basic Thrift Fund contributions, Matching Thrift Fund contributions and the FICA contributions particular to F.E.R.S. employees. Therefore, the sum of $124,000 has been included for fiscal year 1991.

Item 7. Cost of Within-Grade Salary Advancements ($211,000)

Supreme Court employees who receive an "above average level of competence" performance rating, are entitled to periodic step increases in compensation corresponding with those provided by Chapter 53 of Title 5, United States Code. It is estimated that those salary advancements will cost $211,000 during the fiscal year 1990 ($174,000 for personnel compensation and $37,000 for related benefits). The estimate is based on past experience and takes into account savings due to turnover of personnel and the filling of vacancies at lower rates of pay.

Item 8. Extra Compensable Day in Fiscal Year 1991 ($50,000)

The sum of $50,000 has been included in recognition of the fact that in fiscal year 1991 there will be 261 compensable days compared with 260 compensable days in fiscal year 1990 ($41,000 in personnel compensation and $9,000 in related benefits).

Item 9. Promotions and Merit Increases ($100,000)

The court requests, as an adjustment to base the sum of $100,000 to fund promotions and merit increases during fiscal year 1991 ($83,000 for personnel compensation and $17,000 for related benefits). It is estimated that this amount will be required to fund anticipated salary increases resulting from promotions, quality step increases and merit awards. Under the Court's compensation program, which includes mandatory, annual performance and development review, promotions to a higher grade can be the result of changes in position classification or improved competence within existing classification. Quality step increases are faster that normal within-grade salary advancements that can be given to employees whose performance is outstanding, and merit awards are monetary rewards for truly exceptional performance or special achievement.

Item 10. Increased pay costs for FY 1991 ($375,000)

According to the projections of the Office of Management and Budget, federal employees will receive a 3.5 percent pay increase, effective the first pay period beginning on or after January 1, 1991. The sum of $375,000 is requested as an adjustment to base for FY 1991 ($226,000 for personnel compensation and $109,000 for related benefits). This amount represents increased pay costs and benefits for the period January 1 to September 30, 1991 resulting from the 3.5 percent pay increase.

Item 11. Increases in contract rates and charges for services, supplies and equipment. ($83,000)

It is estimated that an additional $83,000 will be required in fiscal year 1991 to cover increased charges for the following categories of services, supplies and equipment. The categories include:

1) Travel, 2) Transportation of Things, 3) Rent, Communications and Utilities, 4) Printing and Reproduction, 5) Other Services, 6) Supplies and Materials, and 7) Equipment. This projection is based on recent, plus anticipated, increases in expenditures at an estimated inflation rate of 4.3 percent, for an additional $83,000. The projection does not include requirements for travel or for new personnel.

Item 12. Increase in Postage Costs ($18,000)

The postage rate is expected to increase from $.25 to approximately $.30 to mail a first class one ounce letter. It is anticipated that the postal service's Board of Governors will vote to increase postage effective during the summer of 1990. The sum of $18,000 is requested to cover this anticipated postal increase.

Item 13. Federal Telecommunications Service increase ($11,000)

Fiscal Year 1991 Federal Telecommunications Services (FTS) are anticipated to increase an estimated 10 percent over FY 1990 costs. This increase provides for anticipated greater use of the FTS.

Item 14. Printing and Reproduction ($36,000)

The U.S. Government Printing Office estimates that printing and binding costs will increase by 7 percent in Fiscal Year 1991 over Fiscal Year 1990. This increase is due to projected increases in labor, paper, and commercial procurement prices.

Item 15. Increased cost of lawbook accessions and continuations ($34,000)

Lawbook costs continue to increase significantly. The rate of increase has been at a much higher rate than the general inflation for other goods and services. It is expected that price increases will continue over the coming fiscal year. Therefore, the sum of $34,000 is requested fiscal year 1991, which represents an increase of eight percent over the amount available in 1990.

Item 16. Computer System Improvement Program ($100,000)

The court's extensive word processing support work outside of the Justices' Chambers is performed on Hewlett Packard terminals which are connected to the Hewlett Packard mini computer, where the word processing software resides. Employees performing clerical and secretarial activities use this "HP Word" software as their principle means of producing letters, documents, and other paperwork. This centrally stored software will be phased out by the Hewlett Packard Company as part of its marketing strategy to replace the older style terminals and software with Personal Computers (PC's). The PC's can do word processing chores using software stored independently within each one. This planned shift by Hewlett Packard (HP) reflects an industry wide trend. The shift to PC's requires that we replace our HP terminals with PC's in a planned, orderly fashion. Of the 80 users on the system, 60 are using terminals and 20 are using PC's. We have proceeded gradually with the installation of PC's to date, and are now faced with the need to accelerate the replacement of the remaining HP terminals.

The cost of replacing the 60 terminals is $300,000, which includes the PC, additional memory and disk storage as necessary, cabling, software, peripherals, training materials and documentation. We would like to phase in the replacement of the terminals over a three year period. A recurring amount of $100,000 is requested to purchase 20 PC's per year for three years.

Mr. **Smith**. We are pleased to have with us today testifying on behalf of the court Justice Scalia and Justice O'Connor. Do you have a statement?

STATEMENT OF JUSTICE O'CONNOR

Justice **O'Connor**. Thank you, Mr. Chairman, and the members of the committee.

Justice Scalia and I appreciate very much the chance to be here today and talk to you about the court's budget for 1991. Before I do that, I want to express our appreciation to the committee for the budget process during the preceding year. We had reached quite a critical stage at the Court, with lack of funds impairing our programs, and we are very grateful for the Committee's action on our 1990 budget request.

The proposed fiscal year 1991 budget includes no new staff, no new programs of any kind. It does propose an increase of $1,727,000 over the budget authority for 1990, and the make-up of that item is what we would like to briefly tell the committee about. Every item but one represents mandatory increases, largely arising out of pay increases.

There were cost of living increases given to all employees. The Justices and the statutory officers of the court received a larger increase beginning this year, and those increased pay costs are reflected in our increased requests also, as well as amounts for the increase in Social Security taxes and the costs of our Federal Employees' Retirement System.

The only item in our requested increase for 1991 that is not of a mandatory nature is the $100,000 we are asking to start a three-year computer change program.

The Justices have ATEX computers, but the other employees of the court that handle all the court's business, the Clerk's office and all of the other offices, have been using Hewlett-Packard computers, which have been operated heretofore out of a central software unit. The Hewlett-Packard company is phasing that out and requiring everyone to go to personal computers. The cost of that change we propose to phase in over a three-year period starting with $100,000 in 1991.

I think those are the only changes. I will leave the written statement with the Committee.

Mr. **Smith**. We will insert that for the record.

Justice **O'Connor**. Mr. Chairman, we certainly are ready to respond to any inquiries that the Committee may have.

[The written statement of Justice O'Connor follows:]

Justice Sandra Day O'Connor
Supreme Court of the United States
February 5, 1990

To the House Appropriations Subcommittee:

Mr. Chairman and Members of the Committee, Justice Scalia and I appreciate this opportunity to appear before your Committee to address the budget requirements of the Supreme Court for the fiscal year 1991.

We have with us today Alfred Wong, Marshal of the Court; and Tony Donnelly, Director of Budget and Personnel.

As usual, the budget request is divided between the Salaries and Expenses of the Court and Care of the Building and Grounds. The total fiscal year 1991 budget for Care of the Building and Grounds is $3,453,000. My statement will be limited to the Salaries and Expenses of the Court. Mr. George White, Architect of the Capitol, will submit a statement to the Subcommittee regarding his segment of the total budget.

Our total fiscal year 1991 budget estimate for Salaries and Expenses is $19,224,000. This is an increase of $1,727,000 over the budget authority for 1990. The 1990 budget authority has been adjusted to reflect a proposed supplemental appropriation for $63,000 to fund the FY 1990 cost of the increased pay of Justices and Statutory Court Officers.

The proposed FY 1991 budget includes $1,912,000 in base adjustments. The majority of the base adjustments, $1,730,000, represent uncontrollable increases in salary and benefit costs. The remaining base adjustments of $182,000 are for inflationary increases in various fixed costs. Increased funding for base adjustment items allows us to keep up with the rising costs of normal activity.

We have reduced the budget base by $285,000 which represents four non-recurring projects funded in fiscal year 1990.

We are proposing an increase of $100,000 to begin the first phase of a three year computer improvement program. The recurring increase will fund the replacement of 20 Hewlett-Packard terminals per year with personal computers. This program prepares the Court for anticipated changes in the computer industry involving a transition of word processing from central minicomputers to personal computers. The justification for this item appears on page 1.10 of our budget submission.

The Court appreciates the Committee's favorable action on our FY 1990 budget request. Thanks to the Committee's action, the Court is able to carry out its important work without implementing drastic cuts in personnel and services.

This concludes my prepared statement Mr. Chairman. Justice Scalia, the officers of the Court who are present, and I will be happy to answer any questions that you may have.

FISCAL YEAR 1990 FUNDING

Mr. SMITH. Justice Scalia?

Justice SCALIA. Nothing to add, Mr. Chairman. I join Justice O'Connor.

Mr. SMITH. Well, we are glad to have your testimony backing up your justifications. We were able to appropriate your full request last year. I assume everything worked out the way you thought it would?

Justice O'CONNOR. Absolutely, and we were at a very critical stage, Mr. Chairman. We are able to fulfill the hiring of our allotted number of personnel now and carry on our programs as we want to be able to.

CASELOAD

Mr. SMITH. Now, everyone is concerned about the caseload that all the courts have. Are there any studies going on now to address the possibilities of handling this case load problem? What can you tell us about that?

Justice O'CONNOR. Mr. Chairman, there is a Federal Court Study Commission that is currently circulating drafts of its report and recommendations, and I am sure that you and other Members of the Congress will be receiving that before long, and it will contain a number of recommendations.

Now, those recommendations touch primarily on the needs of the lower Federal Courts, the District Courts and the Courts of Appeal. It is going to include some recommendations about the diversity jurisdiction of the Federal Courts, and some other recommendations of a broad-based nature. I have looked preliminarily at the report that they are circulating for comments. I think you will find a number of things in it that will merit your attention, and they do address the workload.

Now, our Court is not suffering from an increase at present in the workload. Congress, a little over a year ago, changed our mandatory appellate jurisdiction to make it discretionary. That one change has made it possible for us to take a few less argued cases this year than in the past few years and to go back closer to the level of 1980 in terms of our workload. We think that is a welcome change.

Mr. SMITH. Has that reflected itself yet in your workload?

Justice O'CONNOR. It has, Mr. Chairman. We anticipate a total number of argued cases this term of probably 144. Two years ago we had 167 argued cases. We find, just to show you the effect of the change in the appellate jurisdiction, that two years ago we heard 31 appeals. This term we have only 8. So you can see readily the change that your legislation affected, and we think it has been beneficial.

Justice SCALIA. Mr. Chairman, the change, as Justice O'Connor suggested, is really reverting to historical levels, we have been complaining about the increase in the workload for years. In 1980, for example, we had 154 argued cases. This year we anticipate about 144, so we are close to the 1980 level. In years well before that we had fewer cases still. I doubt whether we will ever be able to revert to those earlier levels, but getting back to the level we were around in 1980 is some accomplishment, I think.

DEATH PENALTY CASES

Mr. **Smith**. Well, the laws have been changed, too. You have more death sentences now. Has that reflected itself in the case load?

Justice **O'Connor**. In a sense it has. Those states that do implement a death penalty have any number of cases that come to our court, and sometimes come several times with regard to the same individual, and we have a fairly substantial block of work in connection with those death cases.

Mr. **Smith**. So, with an increase in the number of instances where the death penalty would apply, you can expect some increase in your workload?

Justice **O'Connor**. Yes, and we will see more cases coming out of the Ninth Circuit, I suppose, due to changes in California.

Justice **Scalia**. Much of that increase attributable to the death penalty doesn't appear in these statistics that we have mentioned dealing with the number of argued cases.

A lot of the work that arises out of the death penalty consists of reviewing petitions for stay of execution, which are many more numerous than the argued cases we accept involving the death penalty. Those petitions have to be examined initially by one Justice and sometimes go to the full Court to see whether there is enough substance to the appeal that the prisoner intends to file that a stay ought to be granted.

All of that, as I say, doesn't show itself in the argued-cases statistic. It is a relatively new part of the business of the court that we didn't have, to any significant degree in 1970 but have now.

IMPACT OF DRUG CASES

Mr. **Smith**. Well, now, the drug cases are so numerous and there are going to be more and more of them. We have even heard suggestions now that we should have separate courts to handle drug cases. In fact there have been proposals, I think, floating around the Hill here to establish some separate district courts to handle drug cases.

Anyway, the point is that we are going to have a big increase in the number of drug cases, and under the law, criminal cases come to the courts in preference to take priority over civil cases. Are we getting to the point where it is not going to be practical to have a civil case filed and receive justice?

Justice **O'Connor**. Well, we don't see that at the Supreme Court level. The mix between criminal and civil cases and the applications that come to us is much the same as it has been in the past.

Mr. **Smith**. You don't see that at your level?

Justice **O'Connor**. No.

Mr. **Smith**. However, the Supreme Court is the ultimate keeper of justice in this country, and should be concerned about all levels. I know the Justices had always been concerned about the trends in the court system.

Justice O'CONNOR. I think the concern, Mr. Chairman, we would see is in some jurisdictions, for instance, in certain areas in Florida where there is such a heavy case load of criminal drug prosecutions that it probably does affect the ability of the federal courts to decide their civil calendar.

Mr. SMITH. Now, I won't ask you what all is in this report that you have been talking about, but does it deal with this kind of problem?

Justice O'CONNOR. Mr. Chairman, I am not sure if it will make any specific recommendations along the lines you are suggesting or not, but they did take a look at the overall problem of the Federal Courts and their case load. I think the report is due here in the Congress by April of 1990. So it won't be long before——

Mr. SMITH. But there won't be anything in that report that would affect your 1991 budget?

Justice O'CONNOR. No, I don't think so, Mr. Chairman.

Mr. SMITH. Mr. Regula.

Mr. REGULA. No questions.

Mr. SMITH. Mr. Kolbe?

REDUCING THE COURT'S WORKLOAD

Mr. KOLBE. Mr. Chairman, I don't really have any questions. This is a fairly easy hearing.

It is not often that we get an agency, in this case the Court, coming before us suggesting no new personnel, no new programs, and with increases basically due to inflationary increases.

I also very much appreciate the comments you made about your workload. We have been hearing for some years about the increasing load at the Court, and some people have suggested there ought to be ways for the Court to reduce that load without just trying to increase staff.

I think apparently the Court has now decided there are ways to actually decrease the load of cases that you are hearing, so I am very pleased to hear that. I don't have any questions, Mr. Chairman.

Justice SCALIA. Mr. Kolbe, Justice O'Connor has mentioned that, thanks to the Congress, we no longer have the mandatory appellate jurisdiction in a certain category of cases, which cases often were not really worthy of our attention, but had to be taken. But there is a factor at work in addition to that. There has been—I find this enormously heartening, I don't know whether it will reflect itself in the lower courts as well—there has been about a 7 percent decline in the petitions filed. I refer to paid petitions filed, not prisoner petitions, which are usually not as time-consuming to dispose of as the paid petitions. I think that is an unusual phenomenon.

Mr. KOLBE. If I might, Mr. Chairman, following up on that, what do you think that might reflect, because at this moment the number of cases that are being taken from the District Court to the Appellate Court has not declined; is that correct?

Justice SCALIA. I think that is so.

Mr. KOLBE. So the decline is coming at the next level, carrying it to the final step to the United States Supreme Court. Would you think that it is because of a view that this Court is more willing to stand by decisions made by the Appellate Court? I am just wondering what you think is responsible for that change.

Justice **Scalia**. My best guess, Congressman, since what prompts litigation is uncertainty, is that the filing of fewer appeals is attributable to a belief on the part of lawyers that the law at issue in their cases is sufficiently settled that an appeal is going to be a waste of money. We don't operate like a department store, so that the more customers we have the better job we must be doing.

I would think that the reduction in appeals suggests that the law in many areas has been clarified. We have undergone a lot of changes in recent years, and it took a while to get the new paths established. I think there is less uncertainty in the application of the law than there used to be.

Mr. **Kolbe**. Thank you, Mr. Chairman.

DIVERSITY OF CITIZENSHIP

Mr. **Smith**. One of you mentioned the diversity of citizenship cases. Does that impact a great deal on the Supreme Court's time?

Justice **O'Connor**. Mr. Chairman, not a great deal, but there is a heavy impact on the caseload in the lower courts, and that is one of the things that the Federal Court Study Committee is addressing.

Mr. **Smith**. You know this Committee tried to provide a vehicle for eliminating that problem. The state courts are willing to take the jurisdiction.

Justice **O'Connor**. Right.

Mr. **Smith**. Due to the Judiciary Committee not wanting someone else to do the work they haven't been able to get done, we finally had to drop it in conference, but it might be time to look at that again if they can't get it done. We ought to get that one way or another. If there are no more——

DECREASE IN PAID PETITIONS

Mr. **Regula**. Mr. Chairman, I am interested in your comments on the caseload reduction, and I would have two questions.

Does it reflect a perhaps less activist role on the part of the Court and secondly, does it reflect more uniformity on the Appellate decisions so you don't have the conflicts that have to be resolved at the Supreme Court level?

Justice **O'Connor**. I think it is very hard to know why there would be a 6 to 7 percent decrease in the paid petitions right now. It might take us more than one year to know whether that is a trend that we are seeing or whether it is a single year experience.

It is really hard to know. We take such a small percentage of the cases coming out of the Appellate Court. They do the bulk of the work, and we are just seeing a few less applications from that work that they do.

Mr. **Regula**. Will you be more likely to get them if there were conflicting decisions at the Appellate level?

Justice **O'Connor**. Yes, we still get all those, I think.

Mr. **Regula**. Well, we keep reading that we are a very litigious society, and yet hopefully this reflects some diminution of this trend in our country.

Justice O'CONNOR. Well, it would be nice if the trend will continue. We don't know if it will.

Mr. REGULA. I hope so.

Mr. KOLBE. Mr. Chairman, if I might follow up on the comments about the number of cases. You mentioned that this year you are going to hear, I believe 144 cases, and we have been talking about the decline in the percentage. What percent of cases heard are paid petitions? I would gather most of those are paid petitions, are they not?

Justice O'CONNOR. The total cases filed during the 1989 term are 4,846. Out of those we will hear 144.

Mr. KOLBE. That 4,846 is paid and unpaid. Is that prisoner petitions, too?

Justice O'CONNOR. Everything.

Justice SCALIA. About 2,400 of those I think are paid, and that is the——

Mr. KOLBE. Could you estimate, of the 144, how many of those would actually turn out to be unpaid, prisoner petitions? Eighty-two or three?

Justice O'CONNOR. Not more than about 18.

Mr. KOLBE. We are looking at taking 144 out of about 2,500?

Justice O'CONNOR. Yes.

Mr. SMITH. We, in addition to your——

CAPITAL CASES

Justice O'CONNOR. The capital cases are all unpaid. We have maybe 10 this term.

Justice SCALIA. We would have to push that up.

Justice O'CONNOR. We were talking earlier about the applications for stay of execution in a given term in capital cases, and Mr. Donnelly supplied the number of those applications for stay in capital cases that come to us in a term, and it is up to 1,100.

Ms. HOUSE. Justice O'Connor, the total is 1,100. Twenty-five percent of those are capital for stays of execution.

Justice O'CONNOR. So it is a very substantial number that are coming that aren't reflected in the argued cases.

Mr. SMITH. Last year in addition to the increase in your funding level we gave you the authority requested to increase fees and keep the money for use in the court. Has that been implemented?

Justice O'CONNOR. Yes, Mr. Chairman.

Mr. SMITH. Your 1991 budget anticipates that it will be fully implemented?

Justice O'CONNOR. Yes.

Mr. SMITH. If there are no more questions, thank you very much.

Justice O'CONNOR. Thank you.

Justice SCALIA. Thank you, Mr. Chairman.

Justice O'CONNOR. Thank you so much, Chairman Smith and members of the Committee.

[The following questions were submitted to be answered for the record:]

Mr. Early

QUESTIONS FOR THE RECORD

Question. Why is there a reduction of a projected 37 cases granted review between the 1988 term and the 1989 term?

Response. The recent law making most of the Supreme Court's appellate jurisdiction discretionary rather than mandatory accounts for most of the reduction of cases granted for review. During the 1988 term, 37 of the 170 cases argued were appeals. During the 1989 term, only 8 of the 144 cases to be argued are appeals. We also note a 6% decline during the 1989 term of paid petitions for review. It is not clear whether that modest reduction will continue.

Question. What impact will the sequester have on the Court's ability to operate smoothly and meet its responsibilities?

Response. Fortunately, the Supreme Court will not experience the sequester of $232,000 in fiscal year 1990. The Office of Management and Budget has agreed that the salaries of the Justices, which cannot be reduced, must be eliminated when calculating the sequestration. As a result the Supreme Court's enacted appropriation is below the level subject to sequestration. Corrected copies of the relevant pages of the Court's budget justification have been provided to the Subcommittee.

Question. If the proposed supplemental is not enacted how will the Court absorb its projected shortfall?

Response. The Court has proposed a supplemental appropriation of $63,000 for fiscal year 1990. This amount represents the fiscal year 1990 cost of the increased pay of Justices and Statutory Court Officers resulting from the enactment of Public Law 101-194, the Ethics Reform Act of 1989. If funds are not appropriated to cover the increased salary costs, we will redirect funds from discretionary funds intended for supplies and equipment. Without supplemental appropriations, such redirections are permanent at the expense of the supplies and equipment budgets.

Question. At last year's hearings you mentioned that 97% of the Court's costs are fixed. Has that percentage changed this fiscal year?

Response. Yes. Since the full amount requested for fiscal year 1990 was appropriated, total fixed costs are now approximately 92%. This improved percentage of fixed costs has enabled the Court to function without a hiring freeze, and to fund at a normal level the purchase of library books and microforms, and the replacement of outdated equipment.

Question. Could you give me the status of the replacement of the existing Atex disk drives and the upgrade of the Atex software?

Response. Purchase orders for these items were placed with Atex in December, 1989, when funds became available. Some hardware has been delivered and the balance will arrive before mid-March. Installation of hardware will begin when it has all been delivered.

Atex is now customizing the software and preparing it for our installation. We expect the software to be ready for initial testing with the new hardware in approximately 30 days. Both the testing and the final installation require some down time of the computer systems. We will plan the cut-over to the new hardware and software during a "window" which we will establish in accordance with the Court's opinion work schedule. If such a window is not feasible this spring we will implement the change immediately after the end of the Term, in early July.

Included with the above projects during fiscal year 1990 is the Atex multi-purpose terminal conversion, which will equip Atex terminals in the Justices' Chambers to be used for legal research of the Lexis and Westlaw databases, as well as for word processing and opinion drafting. This project also is proceeding on schedule and implementation will be linked to the activities mentioned above.

Question. Does the Court have any other automation efforts planned? If so, what is the estimated cost of the project(s), and how much is included in your FY '91 budget request?

Response. The Court will continue to improve existing computer applications through the design and programming of appropriate enhancements developed for the system users. Such on-going activity is necessary to achieve continuing improvements in productivity as well as to take advantage of the technological improvements constantly occurring in the computer field. Improvements proposed in the fiscal year 1991 budget request involve the 20 personal computers (PC's) scheduled for purchase, at $100,000.

Question. Would it help the Court efficiency to purchase all 60 PC's this coming fiscal year?

Response. No. There are two reasons:
Our plan is to utilize our small data processing staff as efficiently and effectively as possible, handling both our regular work and the phasing in of the PC's. We must install the equipment, train the users and then provide support for the users as they learn to use the new equipment.
Secondly, technological changes occur rapidly as PC's evolve. So there is some advantage to procuring later versions of PC's by this 3-year project approach.

Question. Could you give me the amount of money we would save (if there is any) by purchasing all 60 PC's at once as opposed to buying 20 PC's over a period of three years?

Response. While savings of approximately six percent ($18,000) could be realized by purchasing all 60 PC's at once, the savings are offset by the advantages of waiting, as mentioned above. Also, PC prices continue to come down while technological improvements continue to be applied to the PC's. When we are ready to purchase, we will choose between GSA contracted prices, which are sometimes lower than commercial list, or negotiate even lower commercial prices. The savings realized from that approach should approximate those from a single purchase.

MONDAY, FEBRUARY 5, 1990.

UNITED STATES SUPREME COURT

CARE OF THE BUILDING AND GROUNDS

WITNESSES

GEORGE M. WHITE, ARCHITECT OF THE CAPITOL
WILLIAM L. ENSIGN, ASSISTANT ARCHITECT OF THE CAPITOL
HERBERT M. FRANKLIN, EXECUTIVE OFFICER
WILLIAM F. RAINES, JR., ADMINISTRATIVE ASSISTANT
J. RAYMOND CARROLL, DIRECTOR OF ENGINEERING
EMANUELE CRUPI, BUDGET OFFICER

Mr. SMITH. Our next witness is the Honorable George M. White, the Architect of the Capitol, who will testify on behalf of the Care of the Supreme Court Building and Grounds appropriation. The amount of $3,453,000 is requested for this account for fiscal year 1991, a net decrease of $916,000 from the $4,369,000 provided in fiscal year 1990. At this point we will place the justification materials for this appropriation into the record.

[The budget justification follows:]

Mr. **Smith**. Mr. White, the Committee welcomes you back, and would ask that you proceed with your statement.

[Mr. White's written statement follows:]

SUPREME COURT, CARE OF THE BUILDING AND GROUNDS

STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committee to present the fiscal year 1991 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

I thought it might be appropriate, if it is agreeable, Mr. Chairman, to present a brief summary of the request and then answer any questions that you may have concerning the detail.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

In our prepared justifications for 1991, we have requested a total appropriation of $3,453,000. This represents a net decrease of $916,000 under the total of $4,369,000 for 1990. The net decrease of $916,000 is represented by increases to the base in the amount of $99,000, which is offset by decreases totalling $1,015,000 for two non-recurring projects funded in fiscal year 1990.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES
CARE OF THE BUILDING AND GROUNDS

Summary of Requirements

Appropriated, 1990	$ 4,400,000
Sequestered pursuant to P.L. 99-177	(-) 31,000
Budget authority, 1990	4,369,000
1991 budget estimate	3,453,000
Proposed decrease	$(-)916,000

Appropriation Language

CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon him by the Act approved May 7, 1934 (40 U.S.C. 13a–13b), $4,400,000, of which $2,121,000 shall remain available until expended: *Provided*, That for fiscal year 1990 and hereafter, funds appropriated under this heading shall be available for improvements, maintenance, repairs, equipment, supplies, materials, and appurtenances; special clothing for workmen; and personal and other services (including temporary labor without regard to the Classification and Retirement Acts, as amended); and for snow removal by hire of men and equipment or under contract, and for the replacement of electrical transformers containing polychlorinated biphenyls, both without compliance with section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

$ 3,453,000,

$ 1,106,000

SUPREME COURT OF THE UNITED STATES
CARE OF THE BUILDING AND GROUNDS
FISCAL YEAR 1991
(dollar amounts in thousands)

Page No.		1991 Request Perm. Pos.	1991 Request Amount
	Summary of changes:		
	Appropriation 1990	33	$ 4,400
	Sequestered pursuant to P.L. 99-177	...	- 31
	Budget Authority, 1990	33	4,369
Page No.	Adjustments to base and built-in changes:		
1.16	1. Annualization of January 1990 pay increases	...	+ 44
1.16	2. Within-grade and other changes	...	+ 27
1.16	3. January 1991 pay increases	...	+ 16
1.16	4. One extra compensable day	...	+ 4
1.16	5. Increases in personnel benefits costs	...	+ 3
1.17	6. Increase in supplies and materials	...	+ 3
1.17	7. Increase in care of grounds	...	+ 2
	8. Installation of automatic controls, elevator No. 2	...	- 175
	9. Replacement of PCB transformers and cable	...	- 840
	Total net decrease requested	...	- 916
	Total appropriation requested, 1991	33	$ 3,453

SUPREME COURT OF THE UNITED STATES
CARE OF THE BUILDING AND GROUNDS
Obligations by Activity
(in thousands of dollars)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Structural and mechanical care of building and grounds, including supplying of mechanical furnishings and equipment (obligations). . .	33	$4,229	33	$3,313	33	$4,032	...	$+ 719
Unobligated balance, start of year	...	- 439	...	- 439	...	- 579	...	- 140
Unobligated balance, end of year	...	579	...	579	...	.....	...	- 579
Budget Authority. .	33	$4,369	33	$3,453	33	$3,453	...	$ .....

Object Classification
(in thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
11 Personnel compensation.	$1,080	$1,166	$+ 86
12 Personnel benefits.	187	195	+ 8
23 Rent, communications, and utilities	708	708	...
25 Other services.	2,207*	1,911**	- 296
26 Supplies and materials.	24	27	+ 3
31 Equipment	23	25	+ 2
Total Obligations.	$4,229	$4,032	$- 197
Unobligated balance available, start or year. . . .	- 439	- 579	- 140
Unobligated balance available, end of year.	579	...	- 579
Budget authority	$4,369	$3,453	$- 916

* Includes $1,981,000 "No Year" obligations.

** Includes $1,685,000 "No Year" obligations

Relation of Obligations to Outlays
(in thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$4,229	$4,032	$- 197
Obligated balance, start of year.	190	351	+ 161
Obligated balance, end of year.	- 351	- 304	+ 47
Outlays.	$4,068	$4,079	$+ 11

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	33	33	...
Total compensable workyears:			
Full-time equivalent employment	33	33	...
Full-time equivalent of overtime and holiday hours. . . .	4	4	...

General Statement

This appropriation, for expenditure by the Architect of the Capitol, provides for the structural and mechanical care of the United States Supreme Court Building and Grounds, including maintenance and operation of mechanical equipment. The Architect performs his duties under authority of the Act of May 7, 1934 (48 Stat. 668).

The mechanical equipment includes such items as air conditioning, refrigeration and ventilating systems with more than 1,000 pieces of equipment; electrical transformer stations; 300 plumbing fixtures and related piping; 8 elevators and 5 dumbwaiters; electric fixtures and wiring.

A force of 33 employees is required for the fiscal year 1991 to cover 2 shifts daily and is made up of 1 Facilities Manager; 1 Clerk (Typing); 1 Maintenance General Foreman; 1 Maintenance Mechanic; 5 Maintenance Mechanic Workers, and 1 Maintenance Mechanic/Laborer; 1 Air Conditioning Equipment Mechanic Foreman and 3 Mechanics in the air conditioning division; 1 Electrician Foreman, 4 Electricians, and 1 Electrical Power Mechanic; 5 Pipefitters in the pipefitting-plumbing division; 1 Elevator Mechanic; 1 Marble Mason; 1 Painter-Decorator; 1 Gardener Foreman and 3 Gardeners and 1 Tool and Parts Attendant.

Justification of Changes

Item 1. Annualization of January 1990 pay increases ($44,000)

In fiscal year 1991 an increase of $44,000 is necessary to provide for annualization of the 1990 pay raise for Wage Board and General Schedule employees effective in January 1990. Of this amount, $35,000 is for basic classified pay; $5,000 is for base pay changes authorized by law for overtime pay; and $4,000 is for mandatory retirement contributions.

Item 2. Within-grade and other changes ($27,000)

Within-grade step changes are authorized under the Prevailing Rate System for Wage-Board and "GS" employees compensated under such systems. An amount of $22,000 is required to fund within-grade and other changes for Wage-Board employees and $3,000 is required for "GS" employees. An additional $2,000 is required for overtime pay to meet the current level of services.

Item 3. January 1991 pay increases ($16,000)

As recommended by the Office of Management and Budget, an amount is requested for an anticipated cost-of-living raise in fiscal year 1991. The amount of $16,000 is requested based on the formula provided by the Office of Management and Budget. This formula assumes an annual increase of 3.5 percent for three quarters of the fiscal year and an absorption rate of 50 percent.

Item 4. One extra compensable day in fiscal year 1991 ($4,000)

An increase of $4,000 is requested in recognition of the fact that in fiscal year 1991 there are 261 compensable days as compared with 260 compensable days in fiscal year 1990.

Item 5. Increases in personnel benefits costs ($3,000)

An increase of $3,000 is needed to meet requirements of personnel benefits costs in fiscal year 1991. Of this amount, $2,000 is necessary to meet mandatory contributions to the Federal Employees' Retirement System and $1,000 will provide for payment to the Federal Employees' Health Benefits fund.

Item 6. Increase in supplies and materials ($3,000)

In fiscal year 1991, an increase in the amount of $3,000 is requested in supplies and materials. This amount will meet additional requirements in the electrical supply account ($1,000) and the electrical light bulbs and tubes account ($2,000). The funding increase is due to rising costs in electrical supplies and for replacement bulbs that are used in the Courtroom of the Supreme Court. The amount of $3,000 will increase the supplies and materials account from $24,000 to $27,000.

Item 7. Increase in care of grounds ($2,000)

This item provides funding for the annual care of the Supreme Court grounds, which includes general annual repairs, snow removal, and landscaping supplies and equipment. The requested amount of $2,000 for fiscal year 1991 will increase this allotment from $9,000 to $11,000. This account has not been increased since fiscal year 1987.

Increases requested are: $71,000 for mandatory increases, including the January 1990 cost of living raise and within-grade salary advancements authorized by law; $16,000 to meet an anticipated cost-of-living raise in January 1991, as recommended by OMB; $4,000 for one extra compensable day in fiscal year 1991; $1,000 for payment to the Federal Employee's Health Benefits Fund; $2,000 for increased contributions to employees' retirement funds; and $5,000 to offset increased costs due to inflation for goods and services procured for two annual recurring maintenance items, supplies and materials and care of the grounds.

That concludes my statement on the needs for fiscal year 1990 for the Care of the Supreme Court Building and Grounds.

I would like now to present a summary of another item, the construction of an office building for the Judiciary.

Judiciary Office Building Development Act

As the Committee will recall, Public Law 99-229, approved December 28, 1985 authorized the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice of the United States, to study alternatives for the construction of a building or buildings on Squares 721 and 722 adjacent to Union Station to house the Administrative Office of the United States Courts, related judicial activities and other such tenants that may be appropriate. Options for financing the construction, including non-Federal sources, were also to be studied.

Public Law 99-349, approved July 2, 1986 appropriated $1,300,000 to the Architect of the Capitol for the authorized study. The Report to the Congress, as required by Public Law 99-229, was prepared and transmitted to Congress on August 10, 1987. In that Report, we recommended that a public-private arrangement be authorized whereby the building would be constructed by a private developer with the Federal Government as the major tenant. Title to the land, which is part of Capitol Grounds, would remain in the Government, with the building leased to the developer but reverting to Federal ownership in 30 years or less. No additional appropriated construction funds would be required.

Pursuant to that Report, the Congress enacted Public Law 100-480 to authorize the Architect of the Capitol to contract for the design and construction of a building adjacent to Union Station to house offices for agencies in the Judicial branch, and for other purposes. This law is titled the "Judiciary Office Building Development Act."

This Act provided for a process whereby the five alternate proposals that were selected pursuant to Public Law 99-229 were revised by the five original competing developers and resubmitted to meet certain new requirements and then reexamined. Based on the revised proposals, a preferred design was submitted to the Chief Justice, pursuant to the provisions of Public Law 100-480, and he approved the design. The next step in the selection process, submission of this recommendation to the newly created Commission for the Judiciary Office

Building, was then completed. Finally, selection of a developer-architect team was made and announced. The selected team consists of Boston Properties and its architect, Edward Larrabee Barnes.

Public Law 100-480 also provided that the balance of the $1,300,000 provided by Public Law 99-349 to carry out the provisions of Public Law 99-229 be transferred to an account under the Architect of the Capitol to provide for design review, construction inspection, contract administration and other related project costs. That account was established; and the funds, approximately $645,000, were transferred.

The financing for the Judiciary Office Building transaction closed on August 15, 1989. The transaction has been structured as a ground lease for 30 years of the government-owned land by the Architect of the Capitol (AOC) to Boston Properties, which is acting as the development manager for the AOC under a development management agreement. In turn, Boston Properties has master leased the entire building to the AOC, which will pay rent on the entire structure collected from the judiciary branch and other governmental tenants. This future rental stream has been "securitized" in the form of a public offering of securities underwritten by two Wall Street investment banking firms and resold to investors. The proceeds of such financing have been received and are now funding the design and construction process. The interest rate on the repayment of this financing is only 37.5 basis points above the 30-year Treasury bond rate at the time of the closing of the transaction. The design process is proceeding on schedule, and we expect to break ground in mid-April, with occupancy by judiciary branch tenants scheduled in the last calendar quarter of 1992. We estimate that the judiciary branch tenants will be occupying floors three through seven, almost half of floor two, and significant portions of the ground floor and concourse levels.

Public Law 100-480 will provide office space for the judiciary on a reimbursable basis in the form of rent that will be below market rates. In effect, the value of the land the government furnishes (and the tax-exempt status of the project) is the primary basis for such reduced rental rates. The rental cost is intended to be paid for in the same way as the judiciary does now for leased space. As I have mentioned, within 30 years title to the building reverts to the government. In other words, the government by paying rent will in effect be amortizing its own mortgage rather than a private developer's mortgage. As these rent costs repay the financing, appropriations for leasing the space will have to continue to be provided for in future budgets. But they will not be as large as under the current system of renting in privately owned buildings. And, the government will own the building when the financing is entirely repaid.

That concludes my overall statement, Mr. Chairman. I shall be pleased to answer any questions on the fiscal year 1991 budget request or the construction of the Judiciary Office Building that you or the Committee may have.

Mr. WHITE. Thank you, Mr. Chairman.

We are pleased to be here to say that we are asking for a decrease of almost a million dollars, $916,000 as you announced.

Mr. SMITH. Does that mean you have made some progress?

OPENING STATEMENT

Mr. WHITE. I think we have. The amount we are requesting in a few items is somewhat of an increase from last year, although there is a net decrease; the increases are largely for mandatory items. We are asking for $99,000, of which $94,000 is for mandatory increases provided for by law for payroll adjustments, etcetera.

We are asking for $5,000 for inflationary cost increases for materials and grounds-keeping, so it is really a minimal budget this year, Mr. Chairman.

Mr. SMITH. What about the portico?

Mr. WHITE. The terraces?

Mr. SMITH. Yes.

Mr. WHITE. Yes, we have begun to repair those. It is going to be done in five stages in order not to make the terraces inaccessible all at once, and——

Mr. SMITH. We don't need to rehash everything we went into last year, but is there anything different in your conclusion concerning the repair and the need for it?

Mr. WHITE. No, there is nothing different, and we have begun the repairs.

Mr. SMITH. Now, go ahead with what you started telling us.

Mr. WHITE. The total cost is still what we estimated it to be. We are doing it in five stages, and leaving an amount in the base until the project is completed, slightly more than a million dollars per year until we complete it, will be requested.

Mr. SMITH. So you are still anticipating around $5 million?

JUDICIARY OFFICE BUILDING STATUS

Mr. WHITE. That's correct. That hasn't changed. The only other thing I should report on perhaps, Mr. Chairman, is the progress on the Judiciary Office Building, for which we don't ask for any funds. We need to keep you apprised because funds will be asked of this Committee when it comes time to lease the building.

OMB SCOREKEEPING OF JUDICIARY BUILDING

Mr. SMITH. Well, you didn't ask for any funds, but we are getting scored, as I understand it, with $51 million in outlays in FY 1991.

Mr. WHITE. Which strikes me as being very strange, since the Federal Government won't have any cash to pay out at all for another five years, and even then it will be paid out on an annual basis over a 30-year period.

To score it all at once strikes me as being strange on two counts: First, presumably they are also going to score the funds as they are appropriated to pay the lease, which is scoring it twice.

Mr. SMITH. Right.

Mr. WHITE. So something needs to be done about adjusting that. Either it should be scored later and not now or if it is scored now, then at least you pick it up later on.

Mr. SMITH. I understand scoring against us at the time you pay the rent because that is an expense at that time. But to score it now, even if you didn't score it later, I mean, you know, we would be better off to build the building and be done with it as far as appropriations are concerned. So I think it puts the whole thing in some jeopardy until we can work that out. We can't absorb a $51 million hit.

Mr. REGULA. Mr. Chairman, are we scoring for the rentals for a sustained period of time?

Mr. SMITH. As I understand it, the excuse for scoring it this way is that we are undertaking an obligation——

Mr. REGULA. It is a lease purchase, I assume?

Mr. SMITH. Yes. So they are going to score the whole thing as if we were building it in one year.

Mr. KOLBE. Three years over the actual outlays of construction. Mr. Chairman, at that point is there really any advantage to us to build it in this fashion?

Mr. SMITH. From the funding standpoint——

Mr. KOLBE. From the appropriations standpoint. It is the same as if we appropriated the $51 million this year.

Mr. SMITH. It is really worse.

Mr. KOLBE. Yes. We get hit twice.

Mr. Chairman, do you know how that decision was made?

Mr. SMITH. OMB has scored it this way in the President's budget request.

Mr. KOLBE. Has anyone had discussions with them about this issue?

Mr. SMITH. We don't know what CBO or the Budget Committee are going to say about it. Even if they disagree, you still have OMB scoring it this way for Gramm-Rudman purposes.

Mr. KOLBE. Mr. Chairman, you know better than I. The Director has said they are going to try to take a jaundiced look at some of these things on the budget that end up being true liabilities of the Federal Government. And I commend them for doing that, but I cannot imagine the rationale for scoring it twice, scoring against us now and scoring it again as we pay the rents each year.

It doesn't make sense—you can't do it both ways. You can do it one way or the other, but you can't do it both ways.

Mr. SMITH. As a matter of fact, I understand the need for scoring it when we pay off the money, but I don't understand the need for scoring it now. Anyway, Mr. White, that really throws the whole thing into jeopardy at this point.

Mr. WHITE. It may be useful to bear in mind another thing, Mr. Chairman, if I may, and that is these funds having been borrowed, were borrowed not on the basis of an obligation that exists, except in connection with the annual appropriation of funds, and the purchasers of the certificates of participation know that. It is a general obligation of the United States, obviously, but it is not obligation in the sense of the term that is used, "full faith and credit," et cetera.

This is, in my judgment, a rather arbitrary decision that ought to be looked at by those who can do something about it.

Mr. KOLBE. Mr. Chairman, may I ask a couple of questions about the financing?

Mr. SMITH. Go ahead.

Mr. KOLBE. I am not sure I understand what the security is for this. The public securities, the underwriting, is to secure the rents, is that correct?

Mr. WHITE. That's correct.

Mr. KOLBE. And those securities would be used only in the event Congress did not appropriate the funds for the rents in a particular year?

ZERO COUPON BONDS

Mr. WHITE. Perhaps I misunderstood your question. The securities, which are called in this case certificates of participation, are, in effect, zero coupon bonds. They have been sold. The monies are in the hands of the trustee, and we are drawing on those funds. The funds are earning interest until we use them, and the obligation on the part of the Government is to repay those on an annual basis beginning five years from now or two years after we occupy, subject, of course, to annual appropriations.

If the Government should renege on its annual appropriation, there is still a remedy on the part of those purchasers on the basis of it being a general obligation of the United States, provided for by law.

Mr. KOLBE. So the securities are being used to pay the Government's rent right now?

Mr. WHITE. No, the securities were sold. They have all been sold, and the underwriters gave us the money, the total value of those securities, some $127 million, which is now in our possession through a trustee appointed to act as an escrow agent.

That $127 million is earning interest so that by the time we need it all, it will have reached a total of about $142 million, not all of which may be needed for the construction, but which we felt was necessary in order to have an appropriate contingency so that we wouldn't have to go to the well twice.

Some of that money could possibly be returned once the construction is completed, but those funds are now available. The certificates have been sold, and the Government is now obligated five years from now to begin paying back the debt on a semi-annual basis, and presumably the monies that will be appropriated to those who will lease the building will be available then to repay.

There is one other factor that should be borne in mind. The legislation that established this process provides that the building may be leased to Federal agencies or to the private sector so that there is an opportunity, in the event that the Government should abandon it, for us to rent it to the private sector and probably collect more rent than we could from the Government. From that standpoint, the purchasers of these certificates have protection in several ways.

The legislation has made our office a sort of a GSA for the legislative branch. We are obligated to repay the funds, and we must collect funds then from the leasing entities, whoever they may be. The primary tenant is the Administrative Office of the Courts, but a portion of the building, approximately a quarter to one-third of the building, will not be rented by the Administrative Office and the other judicial entities, such as the Sentencing Commission and the Judicial Conference, et cetera, that you are aware. That portion of the building we will lease to others, either the legislative branch or to executive branch agencies through GSA or to the private sector, although GSA has said they will take all that is left if we want to give it to them.

Mr. KOLBE. Then the failure of the Congress to appropriate the necessary rents does not in any way alter the legal title which reverts to the Government at the end of the 30-year period?

Mr. WHITE. Not as long as it is paid for one way or another.

Mr. SMITH. Thank you, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman.

TUESDAY, FEBRUARY 6, 1990.

UNITED STATES COURT OF INTERNATIONAL TRADE

WITNESSES

EDWARD D. RE, CHIEF JUDGE

JOSEPH LOMBARDI, CLERK OF THE COURT

Mr. SMITH. Next we hear testimony from the Court of International Trade. The request for fiscal year 1991 is $8,838,000. At this point in the record we will insert the budget justifications submitted in support of this request.

[The budget justification materials follow:]

THE JUDICIARY

UNITED STATES COURT OF INTERNATIONAL TRADE

Summary of Requirements

Appropriation 1990 (enacted to date)	$ 8,272,000
Sequestered pursuant to P. L. 99-177	...
Budget Authority	8,272,000
1991 budget estimate	8,838,000
Proposed Increase	566,000

Appropriation Language

UNITED STATES COURT OF INTERNATIONAL TRADE

SALARIES AND EXPENSES

For salaries of the chief judge and eight judges, salaries of the officers and employees of the court, services as authorized by 5 U.S.C. 3109, and necessary expenses of the court, as authorized by law, [$8,272,000] $8,838,000

UNITED STATES COURT OF INTERNATIONAL TRADE
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.	Summary of changes:	1991 Request Perm. Pos.	 Amount
	Appropriation 1990 (enacted to date)	93	$ 8,272
	Sequestered pursuant to P. L. 99-177	...	...
	Budget Authority, 1990	93	8,272
	Adjustments to base and built-in changes:		
3.6	1. Restoration of amount sequestered from appropriation base resulting from The Balanced Budget and Emergency Deficit Control Act of 1985	...	...
	2. 1990 pay cost increases and other adjustments in compensation:		
3.6	a. Fiscal year 1990 increases for pay raise costs	...	+ 120
3.6	b. Annualization of fiscal year 1990 health benefits costs	...	+ 15
3.6	c. Cost of within-grade and other salary advancements	...	+ 43
3.6	d. Annualization of fiscal year 1990 Social Security costs	...	+ 8
3.7	e. Federal Employees Retirement System (FERS) costs	...	+ 37
3.7	f. One additional compensable day in fiscal year 1991	...	+ 12
	3. 1991 pay cost increases:		
3.7	a. Fiscal year 1991 pay raise for judges	...	+ 188
3.7	b. Fiscal year 1991 pay raise for other Judiciary employees	...	+ 73
3.7	4. Abolishment of seven vacant positions	- 7	- 256
3.7	5. Increase in space rental rates	...	+ 186
3.8	6. Increases in charges for services, supplies, and lawbook continuations	...	+ 11
3.8	7. Increases in travel, postage, and printing and reproduction costs	...	+ 6
3.8	8. Increases in telecommunications services	...	+ 9
3.8	9. Increases in other object expenses for filling one vacant judgeship	...	+ 89
3.8	10. Increases in contracts for court reporter and transcription services	...	+ 25
	Total increases requested	- 7	$+ 566
	Total appropriation requested, 1991	86	$8,838

Mr. SMITH. We have Judge Re again this year. We welcome you back. Do you have a statement?

Judge RE. Yes, Mr. Chairman, I do, and it is a pleasure once again to appear before you on behalf of the Court. As in the past, I am pleased to introduce the Clerk of the Court, Mr. Joseph Lombardi, who is with me here today.

FISCAL YEAR 1991 REQUEST

The appropriations request for fiscal year 1991 is $8,838,000, which is $566,000 more than the $8,272,000 adjusted amount appropriated for fiscal year 1990, or an increase of approximately 7 percent. As you will note in the court's "Justification of Changes", a total of $496,000 is included for pay cost increases and other adjustments in compensation and related benefits for fiscal year 1991.

However, I should like to emphasize that the statement also indicates that seven vacant positions are to be abolished, resulting in a deduction adjustment of $256,000. As a result of that deduction, the overall increase in personnel compensation and related benefits is not $496,000, but only $240,000. We are able to realize that saving in personnel costs through the automation program established by the court, including the utilization of personal computers and electronic court recording equipment, and if I may add, through the sound fiscal and personnel management policies that this court follows.

The sum of $186,000 has been included for an increase for space rental rates imposed by the General Services Administration. This is a 5.4 percent increase over fiscal year 1990. I should like to mention that the increase is $25,000 less than it would have been, because the court relinquished 1400 square feet of assigned space this year. This is also in keeping with the court's policy of relinquishing space through the program of more effective space utilization.

Eighty-nine thousand dollars is requested in anticipation of replacing one of two judges eligible for senior status, and continuing to function with assigned staff, equipment, furniture, and library. $72,000 will be non-recurring, and $17,000 will be recurring.

As I mentioned, $256,000 has been deducted due to the relinquishment of seven vacant positions, of which three are JSP-14 court reporter positions. Therefore, it is anticipated that $25,000 will be required for occasional contractural court reporter and transcription services in place of the $181,000 to be saved by the abolishment of the three court reporter positions.

The balance of the requested increase, $26,000, is necessary to provide for anticipated inflationary factor increases in expenditures for services, supplies, law book continuations, travel, postage, printing and telecommunication costs. I should like to emphasize, as I have in previous appearances, Mr. Chairman, that the court will continue to conserve financial resources through prudent fiscal policy.

The court's "General Statement" and "Justification of Changes", which provide detailed descriptions of the line item adjustments, have been submitted previously. If you, Mr. Chairman, have any questions or require more information, we would be pleased to submit it, and, of course, I will answer whatever questions you may wish to ask.

[The written statement of Judge Re follows:]

UNITED STATES COURT OF INTERNATIONAL TRADE

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1990)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Salaries and Expenses	93	$8,272	86	$8,838	86	$8,838	...	$ 0

Object Classification
(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$3,508	$3,694	$+ 186
12	Personnel benefits	613	667	+ 54
21	Travel and transportation of persons	35	37	+ 2
22	Transportation of things	11	11	+ ...
23	Rental payments to GSA	3,444	3,630	+ 186
	Communications, utilities, and miscellaneous charges	151	162	+ 11
24	Printing and reproduction	24	26	+ 2
25	Other services	263	294	+ 31
26	Supplies and materials	40	45	+ 5
31	Equipment	183	272	+ 89
	Total obligations	$8,272	$8,838	$+ 566

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$8,272	$8,838	$+ 566
Obligated balance, start of year	372	432	+ 60
Obligated balance, end of year	- 432	- 463	- 31
Outlays	$8,212	$8,807	$+ 595

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	93	86	- 7
Total compensable workyears:			
Full-time equivalent employment	93	86	- 7

General Statement

The estimates under this title are to provide for the salaries of the nine judges and supporting personnel of the United States Court of International Trade, and the necessary operating expenses of the Court, including travel expenses, expressage, communication services, printing and binding, supplies, equipment, furniture, new books and regular continuations of reports, encyclopedias, digests and pocket parts of various sets, and miscellaneous items of expense for the fiscal year 1991. For data as to the functions of the Court, its jurisdiction and basic statutory authorities, reference is made to the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

A summary of the business year of the Court for fiscal years 1988 and 1989 follows:

	Pending Beginning of Year	Received	Decided	Pending End of Year
CIVIL ACTIONS				
1988	6,625	1,118	2,008	5,735
1989	5,735	858	2,113	4,480
PROTESTS				
1988	63	0	63	0
1989	0	0	0	0
REAPPRAISEMENTS				
1988	860	0	860	0
1989	0	0	0	0
TOTALS				
1988	7,548	1,118	2,931	5,735
1989	5,735	858	2,113	4,480

Judgeship Summary

Salaries of Judges
Distribution of Obligations
(In thousands of dollars)

	1990	1991	Difference
Article III Judges:			
United States Court of International Trade (9)	$ 920	$1,108	$+ 188

Justification of Changes

An appropriation of $8,838,000 is requested for fiscal year 1991, which is $647,000 more than the appropriation for fiscal year 1990.

Item 1. Restoration of amount sequestered from appropriation base resulting from the Balanced Budget and Emergency Deficit Control Act of 1985 ~~($81,000)~~

~~In accordance with sequestration procedures authorized in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), and the Reconciliation Act of 1989 (P.L. 101-239), a reduction of 1.4 percent in non-exempt budget authority was imposed in fiscal year 1990. The sum of $81,000 has been included in this request to restore the sequestered amount to the appropriation base.~~

Item 2. 1990 pay cost increases and other adjustments in compensation

(a) Fiscal year 1990 increases for pay costs ($120,000)

In accordance with Public Law 100-440, Federal employees received a 3.6 percent pay increase, effective the first pay period beginning on or after January 1, 1990. The cost of this increase on an annual basis is $120,000 ($109,000 for personnel compensation and $11,000 for personnel benefits). The court absorbed the cost of the pay increase for fiscal year 1990 ($90,000).

(b) Annualization of fiscal year 1990 health benefit costs ($15,000)

The amount requested includes $15,000 for the annualization of increases in the agency share of payments for employee health benefits effective in January 1990.

(c) Cost of within-grade and other salary advancements ($43,000)

All graded personnel, who received a satisfactory performance rating pursuant to the salary plan for Judiciary personnel, are entitled to periodic step increases in compensation corresponding with those provided by Chapter 53 of Title 5, United States Code. It is estimated that those salary advancements will cost $43,000 ($38,000 for personnel compensation and $5,000 for related benefits) during fiscal year 1991. The estimate is based on past experience and takes into account savings due to turnover of personnel and filling of vacancies at lower rates of pay.

(d) Annualization of fiscal year 1990 Social Security costs ($8,000)

The sum of $8,000 is requested for increases in social security taxes due to the increases in the rate and the cap. The amount requested represents three months costs of increases that were effective in January 1990. The wage base will increase $48,000 to $50,700 and the tax rate applied will increase from 7.51 percent to 7.65 percent. The resulting annual impact upon the Judiciary will be an increase of approximately 7.37 percent. The annualization (three months) of this increase, 1.84 percent, is included in the fiscal year 1991 budget request.

(e) Federal Employees Retirement System (FERS) ($37,000)

All federal employees hired after December 31, 1983 have been covered under the Federal Employees Retirement System (FERS) rather that the Civil Service Retirement System (CSRS), and all subsequent positions requested have been considered as FERS positions for purposes of budgeting the increased retirement contributions inherent in the system. In addition, as positions filled by CSRS employees become vacant they are increasingly filled with employees under FERS. For fiscal year 1990, this turnover is estimated to increase the Judiciary's costs at a rate 19.0 percent. This percentage increase applies to the total FERS related costs which include: FERS contributions, Basic Thrift Fund contributions, Matching Thrift Fund contributions and the FICA contributions particular to FERS employees (not Medicare contributions). Therefore, the sum of $37,000 has been included for fiscal year 1991.

(f) One additional compensable day in fiscal year 1991 ($12,000)

The sum of 12,000 ($11,000 in personnel compensation and $1,000 in related benefits) has been included in recognition of the fact that in fiscal year 1991 there will be 261 compensable days compared with 260 compensable days in fiscal year 1990.

Item 3. 1991 pay cost increases

(a) Fiscal year 1991 pay raise for judges ($188,000)

The salaries of judges were increased by approximately 7.9 percent in February 1990. On January 1, 1991, salaries of judges will increase by 25 percent. The sum of $188,000 is included for fiscal year 1991 for the cost of nine months of the pay increase. The court absorbed the cost of the salary increase for fiscal year 1990 ($43,000).

(b) Fiscal year 1991 pay raise for other Judiciary employees ($73,000)

On January 1, 1991 it is anticipated that federal employees will receive a 3.5 percent pay increase. The sum of $73,000 ($66,000 for personnel compensation and $7,000 for related benefits) has been included to cover the cost of this increase for nine months (January - September 1991).

Item 4. Abolishment of seven vacant positions (-$256,000)

The sum of $256,000 has been deducted as a result of the abolishment of seven vacant permanent positions (three JSP-14 court reporters, one JSP-8 and two JSP-7 stenographers, and one JSP-5 clerk/messenger). This is in keeping with the court's policy of abolishing vacant position which are no longer needed.

Item 5. Increase in space rental rates ($186,000)

The sum of $186,000 is requested for fiscal year 1991 to cover increase in space rent assessed by the General Services Administration (GSA). The rental cost for space occupied by our court will increase from $3,444,000 to $3,630,000, an increase of 5.4 percent.

The $3,444,000 reflects a $25,000 reduction for space relinquished in Florida in fiscal year 1990.

Item 6. Increases in charges for services, supplies, and lawbook continuations ($11,000)

It is estimated that an additional $11,000 will be required in fiscal year 1991 to cover increased charges for services, supplies, and lawbook continuations. This projection is based on anticipated increases in expenditures at an inflation rate of 4.3 percent with the exception of lawbooks for which an 8.1 percent increase is anticipated.

Item 7. Increases in travel, postage, and printing and reproduction costs ($6,000)

It is estimated that travel costs will increase approximately 4.3 percent due to inflation, postage rates will increase based on a 12 percent hike proposed by the Postal Service in the summer of 1990, and printing and binding costs will go up by approximately 7 percent.

Item 8. Increases in telecommunications services ($9,000)

Based on experience over the last several years and information provided by GSA, it is estimated that FTS costs will increase 10 percent and other telecommunications services will increase 4.3 percent in fiscal year 1991. The sum of $9,000 is requested to cover these increases (exclusive of requirements relating to new personnel). These increase are local telephone, $2,000; distance telephone, $1,000 and FTS, $6,000.

Item 9. Increase in other object expenses for filling one vacant judgeship ($89,000)

In anticipation of one of the two eligible judges taking senior status, the sum of $89,000 is requested, representing the cost to provide equipment, furniture, library and miscellaneous items for a replacement judge and staff appointed in place of a judge taking senior status and continuing to function with assigned equipment, furniture and library.

Item 10. Increase in contracts for court reporter and transcription services ($25,000)

Based on the relinquishment of three JSP-14 court reporter positions in fiscal year 1991, it is anticipated that $25,000 will be required for occasional use of a contractual court reporter and contractual transcription services.

AMENDED

STATEMENT OF EDWARD D. RE
Chief Judge
UNITED STATES COURT OF INTERNATIONAL TRADE
before
The Subcommittee of the
Committee on Appropriations
House of Representatives

February 6, 1990

Mr. Chairman, Members of the Committee:

It is a pleasure once again to appear before you on behalf of the United States Court of International Trade. As in the past, I am pleased to introduce the clerk of the court, Joseph Lombardi, who is here with me today.

The appropriation requested for fiscal year 1991 is $8,838,000, which is $566,000 more than the $8,272,000 adjusted amount appropriated for fiscal year 1990, or an increase of approximately 7%.

As you will notice in the court's "Justification of Changes" statement (Items 2 and 3), a total amount of $496,000 is included for pay cost increases and other adjustments in compensation and related benefits for fiscal year 1991. However, I should like to emphasize that the statement (Item 4) also indicates that seven vacant positions are to be abolished resulting in a deduction adjustment of $256,000. As a result of that deduction, the overall increase in personnel compensation and related benefits is not $496,000 but only $240,000.

We are able to realize that saving in personnel costs through the automation program established by the court, including the utilization of personal computers and electronic court recording equipment. And, if I may add, through the sound fiscal and personnel management policies that this court follows.

The sum of $186,000 is included for an increase in space rental rates imposed by the General Services Administration. This is a 5.4 percent increase over fiscal year 1990 rates. I should like to mention that the increase is $25,000 less than it would have been because the court relinquished 1,400 square feet of assigned space this year. This is in keeping with the court's policy of relinquishing space through a program of more effective space utilization.

$89,000 is requested in anticipation of replacing one of the two judges eligible for senior status, and continuing to function with assigned staff, equipment, furniture and library. $72,000 will be non-recurring and $17,000 will be recurring.

As I mentioned, $256,000 has been deducted due to the relinquishment of seven vacant positions, of which three are JSP-14, court reporter positions. Therefore, it is anticipated that $25,000 will be required for occasional contractual court reporter and transcription services in place of the $181,000 to be saved by the abolishment of the three court reporter positions.

The balance of the requested increase, $26,000, is necessary to provide for anticipated inflationary factor increases in expenditures for services, supplies, lawbook continuations, travel, postage, printing and telecommunication costs.

I should like to emphasize, as I have in previous appearances, that the court will continue to conserve its financial resources through prudent fiscal policy.

The court's "General Statement" and "Justification of Changes", which provide detailed descriptions of the line item adjustments, have been submitted previously. If the Committee requires more information, we will be pleased to submit it, and, of course, I will answer any questions you may wish to ask.

CASELOAD

Mr. **Smith**. I note your reductions and relinquishments in space, but as I understand it, you had 25 percent fewer cases in 1989 compared to 1988. Is that correct?

Judge **Re**. Yes. That is true, Mr. Chairman. There has been a decline in the number of new cases filed over the past three fiscal years, from 1987 through 1989.

Mr. **Smith**. In view of that, are there other reductions in space or personnel, or does the vacancy in the judgeship need to be filled?

Judge **Re**. Well, the filling of the vacant judgeship is strictly an executive prerogative. We have not stated that there is any emergency that it be filled, but I would like to say a word, if I may, as to our workload because there is something that the numbers do not reveal.

I should like to refer to the consolidation procedure that resulted from the increasing of the filing fee. For example, just last week I decided one customs case that actually was five cases. In the past there would have been five separate cases that now were consolidated. The statistics will show one case was decided. Years ago, there would have been five cases.

Mr. **Smith**. Why is that?

Judge **Re**. Because we increased the filing fee from $10 to $120; is that correct?

Mr. **Lombardi**. Yes.

Mr. **Smith**. They combined them, right?

Judge **Re**. That is correct.

Mr. **Smith**. Well, does it take five times as much work to decide one case instead of the five?

Judge **Re**. Well, maybe not five times, but it surely took more than three times, because there were five different products, five different importations, and the work was the same, that is, to determine which was the appropriate tariff classification under Title 19 of the U.S. Code.

Mr. **Smith**. Can they just put in as many as they want?

Judge **Re**. Yes, if there are common questions of law or fact. We are actually liberal in permitting the consolidation. I must add that in the classification of products, the Customs Service, pursuant to specific laws that have been passed, is doing its work more efficiently. We are pleased that it is not necessary to bring so many of these cases to court.

Also, the Customs Service gives advanced rulings as to the classification of goods, hence, it isn't necessary to have these cases go to court. It is efficiency. If you will forgive a self-serving statement, Mr. Chairman, you know that we have significantly reduced our personnel during the past five or ten years.

COURT REPORTERS

Mr. **Smith**. You reduced court reporters.

Judge **Re**. Well——

Mr. **Smith**. But can you contract out for them?

Judge **Re**. We have done more than that. We have actually reduced, personnel. How much, Mr. Lombardi, during the past——

Mr. **Lombardi**. Thirty-five percent reduction in the clerk's office.

Mr. **Smith**. Has that been offset by contracting?

Mr. **Lombardi**. No, no, not at all. Contracting is much more economical than full-time court reporters.

Mr. **Smith**. But you have contracted for more court reporters?

Mr. **Lombardi**. Yes, only for contract court reporters. We have fewer contract court reporting days than we had full-time court reporting employees working for the court, Mr. Chairman.

Mr. **Smith**. So you have apparently offset by——

Mr. **Lombardi**. Yes. And electronic court reporting equipment which we purchased is still less expensive than the contract court reporters.

Mr. **Smith**. I see. Well, we can get the details in the record.

Thank you very much.

Judge **Re**. Thank you so much, Mr. Chairman.

Mr. **Lombardi**. Thank you.

[The following questions were submitted to be answered for the record:]

Questions Submitted by Congressman Smith

UNITED STATES COURT OF INTERNATIONAL TRADE

QUESTION: **Your Court has experienced a significant decrease in caseload over the past several years, which is reflected in your decrease of seven positions in FY 1991. What is the cause of the reduction in the number of cases received?**

ANSWER: There has been a significant and continuous decline in the number of new cases filed over the past three fiscal years from 1987 through 1989.

The decline is attributable to the decrease in only one area of the court's subject matter jurisdiction, i.e., cases challenging protests denied by the Customs Service.

New cases contesting administrative decisions within other areas of the court's subject matter jurisdiction --including countervailing and antidumping duties and trade adjustment assistance -- have remained relatively stable over the past four years. In fact, in FY 1989, there was an increase over FY 1988, in the number of new cases filed to contest administrative decisions in both countervailing and antidumping duties and trade adjustment assistance cases.

The number of cases filed each year to contest denied protests began to decline in 1987, soon after the filing fee for a summons was increased from $10 to $120 in March 1987. Although the number of summonses declined each year, apparently as a result of the increased filing fee, the average number of denied protests and entries consolidated in each summons increased. As a result of this increased consolidation, the number of denied protests and entries brought before the court each year has remained relatively stable over the past five years.

Apart from the filing fee increase, two changes in the law probably had, and may continue to have, an effect on the number of cases filed to contest Customs Service denied protests.

With the passage of the Omnibus Trade and Competitiveness Act of 1988, and the replacement of the Tariff Schedules of the United States (TSUS) with the new Harmonized Tariff Schedule of the United States (HTSUS), greater use has been made by importers of the Customs Service administrative ruling program than ever before.

More recently, a provision in the Anti-Drug Abuse Amendments Act of 1988 required the Customs Service to create new administrative procedures to "provide for nationwide uniformity", and new procedures by which persons affected by the lack of nationwide uniformity can have the "alleged inconsistencies resolved in an expedited and timely fashion."

That law also required the Customs Service to allow commercial importers to receive advance binding classification rulings under the HTSUS at the Customs district where the merchandise will be imported or at any other district where the importer would have reason to do business.

QUESTION: How many cases have you received to date in FY 1990 compared to the same time in FY 1989?

ANSWER: We received 202 summonses during the first four months of FY 1990 compared to the 265 we received during the same period in FY 1989.

QUESTION: Do you anticipate that your caseload will continue to decline or at least remain at this lower level for the foreseeable future?

ANSWER: In my previous answer, I described two programs implemented by the Customs Service. If these two new programs, Uniformity of Customs Officers Decisions and the District Ruling Program, achieve the intended Congressional purpose, i.e., to enhance and expedite Customs Service dealings with importers by providing a means for commercial importers to import their products with certainty regarding Customs Service treatment of their importations, there should continue to be fewer situations requiring judicial review of protests denied by the Customs Service. The other areas of the court's jurisdiction should continue to remain stable.

QUESTION: What is the total amount requested to fill the vacant judgeship in FY 1991?

ANSWER: The request for $89,000 is to provide equipment, furniture, library and miscellaneous items for a replacement judge and staff appointed in place of one of our two judges eligible to retire who may take senior status and continue to function with presently assigned equipment, furniture and library.

Questions Submitted by Mr. Dwyer

UNITED STATES COURT OF INTERNATIONAL TRADE

QUESTION: **Has transformation to the Harmonized Tariff Schedule, which went into effect on January 1, 1989, effected your caseload or type of cases you are hearing in any way?**

ANSWER: There has been no discernible effect on our caseload resulting from the Harmonized Tariff Schedules.

QUESTION: **If Customs erroneously classifies an imported product thereby subjecting it to an unfair tariff for a specific time period and such a case was to end up in your Court, would you generally require that the U.S. Government (Treasury) reimburse the plaintiff retroactively and in full in the amount of the inaccurate duty imposed? (In such a case, Customs acknowledged erroneously classifying the product under a higher tariff during the time period in question).**

ANSWER: If the Customs Service classifies an importation erroneously and liquidates the entry at a higher duty, the importer may protest that liquidation with the Customs Service. If the protest is granted, the importer will be reimbursed retroactively for the full amount of the excess duty paid. If the protest is denied, the importer may challenge that denial in this court. If the court finds that the Customs Service is wrong, the court will direct that the entry be reliquidated at the lower rate of duty, and the importer will be reimbursed for the full amount of the excess duty paid.

TUESDAY, FEBRUARY 6, 1990.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

WITNESSES

JUDGE HOWARD T. MARKEY, CHIEF JUDGE
FRANCIS X. GINDHART, CLERK
RUTH A. BUTLER, ADMINISTRATIVE SERVICES OFFICER

Mr. SMITH. Next we have the U.S. Court of Appeals for the Federal Circuit. The Court requests $9,766,000 for fiscal year 1991. That is an increase of $936,000 over the 1990 appropriation. At this point in the record we will insert the budget justifications submitted in support of this request.

[The budget justification materials follow:]

28-467 0 - 90 - 3

THE JUDICIARY

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Summary of Requirements

Appropriation 1990 (enacted to date)	$8,830,000
Sequestered pursuant to P. L. 99-177	...
Budget Authority, 1990	8,830,000
1991 budget estimate	9,766,000
Proposed Increase	936,000

Appropriation Language

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SALARIES AND EXPENSES

For salaries of the chief judge, judges, and other officers and employees, and for necessary expenses of the court, as authorized by law, [$8,830,000] $9,766,000.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.	Summary of Changes:	1991 Request Perm. Pos.	 Amount
	Appropriation 1990 (enacted to date)	99	$8,830
	Sequestered pursuant to P. L. 99-177	...	...
	Budget Authority, 1990	99	8,830
	Adjustments to base and built-in changes:		
2.5	1. Restoration of amount sequestered to appropriation base resulting from Balanced Budget and Emergency Deficit Control Act of 1985	...	...
2.6	2. 1990 Pay cost increases and other adjustments in compensation		
2.6	a. Fiscal year 1990 increase for pay costs		
2.6	(1) Annualization of 1990 pay raise for Judges	...	+ 94
2.6	(2) Annualization of 1990 pay raise for other Judicial employees	...	+ 117
2.6	b. Annualization of fiscal year 1990 health benefit costs	...	+ 4
2.6	c. Cost of within-grade and other salary advancements	...	+ 47
2.6	d. One additional compensable day in fiscal year 1991	...	+ 12
2.6	3. 1991 Pay cost increases		
2.6	a. Fiscal year 1991 pay raise for Judges	...	+ 240
2.6	b. Fiscal year 1991 pay raise for other Judicial employees	...	+ 113
2.7	4. Increase in space rental rates	...	+ 143
2.7	5. Other increases in travel, contract rates, and charges for services, supplies and equipment	...	+ 40
2.7	6. Non-recurring expenses authorized in fiscal year 1990	...	- 160
	Subtotal	...	+ 650
	Resources for workload increases and improvements in services:		
2.7	7. Additional personnel	+ 4	+ 193
2.8	8. Additional court security officers	...	+ 93
	Subtotal	+ 4	+ 286
	Total increases requested	+ 4	+ 936
	Total appropriation requested, 1991	103	$9,766

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Salaries and expenses	99	$8,830	99	$9,480	103	$9,766	+ 4	$+ 286

Object Classification
(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$4,260	$4,974	$+ 714
12	Personnel benefits	719	814	+ 95
21	Travel and transportation of persons	44	46	+ 2
22	Transportation of things	2	2	...
23	Rental payments to GSA	2,865	3,008	+ 143
	Communications, utilities and miscellaneous charges	100	105	+ 5
24	Printing and reproduction	38	40	+ 2
25	Other services	246	347	+ 101
26	Supplies and materials	51	53	+ 2
31	Equipment	505	377	- 128
	Total obligations	$8,830	$9,766	$+ 936

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$8,830	$9,766	$+ 936
Obligated balance, start of year	926	1,073	+ 147
Obligated balance, end of year	-1,073	-1,192	- 119
Outlays	$8,683	$9,647	$+ 964

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	99	103	+ 4
Total compensable workyears: Full-time equivalent employment	95	101	+ 6

General Statement

The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction of appeals from final decisions of all federal district courts in cases arising under 28 USC 1338; 35 USC 145, 146, and 28 USC 1346 (a) (2); final decisions of the United States Court of International Trade; final decisions of the United States Court of Veterans Appeals; decisions of the United States Claims Court; final determinations of the United States International Trade Commission relating to unfair practices in import trade made under 19 USC 1337; findings of the Secretary of Commerce under headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States relating to importation of educational or scientific instruments and apparatus; final orders or decisions of the Merit Systems Protection Board, final decisions of the General Accounting Office Personnel Appeals Board, and final decisions of all agency Boards of Contract Appeals; and exclusive jurisdiction over appeals from final decisions of the Patent and Trademark Office tribunals on patent applications and interferences, trademark applications and interferences, cancellations, concurrent uses, and oppositions; and appeals under section 71 of the Plant Variety Protection Act of 1970.

The court also has exclusive jurisdiction of: (1) appeals from interlocutory orders or decrees in cases where the court would have jurisdiction of the appeal; (2) appeals from interlocutory orders granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court; and (3) appeals from judgments in civil actions for patent infringement otherwise appealable to the court and final except for accounting. The court may, in its discretion, permit an appeal from an interlocutory order of a judge who certifies that there is a controlling question of law and a substantial ground for difference of opinion thereon, and that an immediate appeal may materially advance the ultimate termination of the litigation.

References to basic statutory authorities are contained in the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

Judgeship Summary

Salaries of Judges
Distribution of Obligations
(In thousands of dollars)

	1990	1991	Difference
Article III Judges:			
Circuit (12)	$1,300	$1,582	$ 282

Justification of Changes

An appropriation of $9,776,000 is requested for fiscal year 1991, which represents an increase of $1,057,000 over the appropriation for 1990. Details of the increase in requirements for fiscal year 1991 follow.

Item 1. Restoration of the amount sequestered to appropriation base resulting form the Balanced Budget and Emergency Deficit Control Act of 1985 ~~($121,000)~~

~~In accordance with the sequestration procedures authorized in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) and the Reconciliation Act of 1989 (P.L. 101-239), a reduction of 1.4 per cent in non-exempt budget authority was imposed in fiscal year 1990. The sum of $121,000 has~~

been included in this request to restore the sequestered amount to the appropriation base.

Item 2. 1990 pay cost increases and other adjustments in compensation

(a) Fiscal year 1990 increase for pay costs

(1) Annualization of 1990 pay raise for judges ($94,000)

The salaries of judges will increase 7.9 per cent effective February 1, 1990. The increase for eight months was absorbed in 1990, however the full year cost of $94,000 is required in fiscal year 1991 ($90,000 for personnel compensation and $4,000 for related benefits).

(2) Annualization of 1990 pay raise for other judicial employees ($117,000)

In accordance with Public Law 101-136, federal employees will receive a 3.6 percent pay increase, effective the first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $117,000, ($103,000 for personnel compensation and $14,000 for related benefits).

The increase for nine months was absorbed in 1990, however, the full amount of $117,000 is required in 1991.

(b) Annualization of fiscal year 1990 health benefit costs ($4,000)

The amount requested includes $4,000 for the annualization of health benefits effective in January 1990.

(c) Cost of within-grade and other salary advancements ($47,000)

All graded personnel in the Court of Appeals for the Federal Circuit who receive a satisfactory performance rating pursuant to the salary plan for Judiciary personnel are entitled to periodic step increases in compensation corresponding with those provided by Chapter 53 of Title 5, United States Code. It is estimated that those salary advancements will cost $47,000 during fiscal year 1991 ($43,000 for personnel compensation and $4,000 for related benefits). The estimate is based on past experience and takes into account savings due to turnover of personnel and the filling of vacancies at lower rates of pay.

(d) One additional compensable day in fiscal year 1991 ($12,000)

The sum of $12,000 has been included because in fiscal year 1991 there will be 261 compensable days instead of 260 as in 1990 ($11,000 in personnel compensation and $1,000 in related benefits).

Item 3. 1991 pay cost increases

(a) Fiscal year 1991 pay raise for judges ($240,000)

In accordance with P.L. 101-194, the salaries of Article III judges will increase by 25 per cent effective January 1, 1991. The sum of $240,000 is requested as an adjustment to base for fiscal year 1991 ($230,400 for personnel compensation and $9,600 for related benefits). This amount represents increased pay cost and benefits for the period of January 1, 1991 through September 30, 1991.

(b) Fiscal year 1991 pay raise for other judicial employees ($113,000)

It is expected that all federal employees will receive a 3.5 percent pay increase effective in January 1991. The sum of $113,000 ($94,000 for personnel compensation and $19,000 for related benefits) has been included to cover the cost of this increase for nine months (January - September 1991).

Item 4. Increase in Space Rental Rates ($143,000)

The sum of $143,000 is requested for fiscal year 1991 to cover an increase in space rent assessed by the General Services Administration (GSA). The rental cost for space occupied by the Court of Appeals for the Federal Circuit will increase from $2,865,000 to $3,008,000, an increase of 5 percent.

Item 5. Other Increases in Travel, Contract Rates, and Charges for Services, Supplies and Equipment ($40,000)

It is estimated that an additional $40,000 will be required in fiscal year 1991 to cover increased charges for travel, services, supplies and equipment. This projection is based on anticipated increases in expenditures of four percent, with the exception of lawbooks, for which an eight percent increase is estimated.

	Amount Available $000	FY 1991 Projected Cost $000	Increased Amount $000
Travel and Transportation of persons . . .	44	46	2
Transportation of things. . . .	2	2	...
Telecommunications services	100	105	5
Printing and reproduction . .	38	40	2
Other services . .	246	254	8
Supplies and materials. . . .	51	53	2
Equipment (including furniture) . . .	264	275	11
lawbooks	120	130	10
Total			$40

Item 6. Nonrecurring expenses authorized in fiscal year 1990 (-$160,000)

The amount of $160,000 granted in fiscal year 1990 to cover installation of AIMS in this court is being deleted from our fiscal year 1991 base since AIMS was a one-time appropriation.

Item 7. Additional Personnel (4 positions, $193,000)

The court requires four additional positions in 1991. The sum of $69,000 is requested to provide two library positions, ($50,000 for compensation, $14,000 for benefits, and $5,000 for equipment). The addition of these positions is based on the Judicial Conference policy that for every 6 judicial officers (defined as judges, senior judges and magistrates) there should be one position in the library. There are 27 judgeships and 8 senior judges, totalling 35 judicial officers in the two courts served by this one library. Thus, there should be five positions in the library and there are currently only three.

The sum of $67,000 is requested to provide one technical assistant (staff attorney) position ($50,000 for compensation, $14,000 for benefits, and $3,000 for equipment). The addition of this position is based on the growth in filings in the court's appellate patent jurisdiction. District court appeals now represent 34% of the pending caseload, compared with 20% in 1984. Moreover, only 26% of these cases are settled or dismissed as compared with 35% of other cases. Consequently, an increasing proportion of the court's judicial resources must be devoted to these complex cases, many involving state-of-the-art technology.

The sum of $57,000 is requested to provide a second motions staff attorney ($42,600 for compensation, $11,400 for benefits, and $3,000 for equipment). The addition of this position is based on the increased number of motions (currently at a rate of over 2,500 a year).

Provision of one technical assistant and one motions staff attorney will give the court five of the twelve staff attorneys the is statutorily authorized. In accord with its established policy, however, the court is continuing to limit its request to those for which there is proven need.

Item 8. Cost of Additional court security officers ($93,000)

The U.S. Marshals Service has recommended an increase of six court security officers in the National Courts Building complex. The complex, which includes the Tayloe, Cosmos and Dolley Madison Houses, houses the Federal Circuit, the Claims Court and the Federal Judicial Center. The sum of $93,000 is requested to cover our portion of the recommended increase in security officers.

Mr. **Smith**. We welcome back Judge Markey again this year. Do you have a statement?

Judge **Markey**. Good afternoon, Mr. Chairman. The Court has submitted a written statement with copies to the Committee.

Mr. **Smith**. We will make your statement a part of the record.

Judge **Markey**. Thank you. I appreciate that. I would like the pleasure of commenting on it.

I will introduce the Clerk of the Court, Mr. Gindhart, and our Administrative Services Officer, Mrs. Butler.

Mr. Chairman, as the printed statement, now of record, mentions, this is my 17th appearance before this committee. As the Chair will hear in a moment, it may be my last.

Mr. **Smith**. Oh, is that right?

Judge **Markey**. Well, there is no time here, of course, and I wouldn't ask for time of the Chair or the Committee, for any kind of extended remembering, but as Mr. Lincoln said, if you don't know where you have been, it is hard to know where you are going.

I am aware of the Committee's schedule and, therefore, like Henry the VIII told each of his wives, "I won't keep you long."

When I was appointed, confirmed and commissioned as Chief of the Court of Customs and Patent Appeals, the budget for that court had already been sent up to this committee. The Court voluntarily cut that request by some $15,000.

The record of this Committee contains a quote of Mr. Wyatt's statement. "I would only comment that lightening may strike at any moment. In my years in Congress, this is one of the few occasions where we have had anyone appear and ask for less money than in the previous year."

We are proud of that statement, and ever since then I believe it is clear that this Court has played fair with this committee. Always.

The Court has never lied to this committee. It has never dissembled, or never has it asked for more than it truly needed, never. Now it faces the dangers implicit in the phrase "no good deed ever goes unpunished."

ADDITIONAL POSITIONS

The first danger is the potential for denial of the Court's personnel needs. No one who reads the newspaper could be unaware of the horrendous pressures on the Congress in these days of deficits and so on, yet the court truly and absolutely needs each of the four staff positions requested here, three of which were requested last year.

COMMENTS ON FEDERAL COURT STUDY

The second danger is something called a tentative recommendation of the Federal Court Study Committee that the Court's budget be no longer approved by this committee, as such, but that it be included in the budget of the Federal judiciary.

The Study Committee said nothing to the Court before approving and publishing its tentative recommendation, and has steadfastly rebuffed all efforts to find out where this idea originated.

For three weeks I have been requesting that and have been denied it. The Study Committee has further declined to supply any analysis or reasons for its recommendation. The recommendation is uninformed, unjustified, unsupported, and unsupportable.

The recommendation was considered by the Congress when this Court was formed in 1982, and Congress rejected that recommendation. The Budget Committee of the Judicial Conference last week wrote to the Study Committee and requested that the Study Committee delete that recommendation.

Still, if it is not deleted, it will presumably go not to this Committee, but to the Judiciary Committee. I should, therefore, I think, alert this committee to the consequences. Broadly speaking, if the Court of Appeals for the Federal Circuit were part of the budget for the Federal Judiciary, it would cost the American taxpayer a minimum in additional disbursements in just the Clerk's Office, the library, the staff attorneys' office and judges' personal staff of $1,899,759.

In those offices, the court presently has 60 persons. It is authorized by statute and by the Judicial Conference, and if it were part of the Federal Judiciary budget, it would have 104 persons in those same offices. Some of the judges of this court, noting this committee's denial last year of our modest request for three staff persons, which would have made a total of 63 out of 104, have suggested we would be better off if we did not have to separately justify our appropriation to this committee. Those judges settled back when I pointed out that the taxpayer would be much worse off.

Indeed, of the 13 Federal Courts of Appeals, the 1988 disbursements for the Clerk's Office, the library, and the staff attorneys in this court, were the absolute bottom of the 13. Though the Court has 12 judgeships, its disbursements for those line items were less than those for the smallest circuit court of appeals, which has six judgeships. The disbursements for judges and staff were second to the bottom, exceeding only those of the six-judge court and less than the ten-judge court.

SPACE RENTAL

As this committee knows, the court is forced to pay an outrageous rent, in my view, to GSA for four floors. We are charged $3 million in this budget. That is second only to the rent charged the 9th Circuit with 28 judges.

When that rental, mandatory rental figure, is there, our court comes out on total expenditures fifth in line. When you take the rent away, which, as I say, is excessive for our court, we come out, as I indicated, at the bottom in those three line items and second to the bottom in the fourth one.

Mr. Chairman, for well over 100 years Congress has separately appropriated funds for the national courts: currently, the Court of International Trade, the Court of Appeals for the Federal Circuit, and the Supreme Court.

That arrangement has enabled this committee to hold the court accountable and to fix responsibility. Indeed, for 17 years not a penny has been spent of the money appropriated by this committee for the Court of Customs and Patent Appeals, and then for the

Court of Appeals for the Federal Circuit, not a penny has been spent that I haven't personally approved and personally signed a voucher for.

From all I can see, the present system ain't broke, and nobody, including the Study Committee, has suggested it is. I hope the Study Committee will delete its recommendation. It may very well do so, particularly in light of the Budget Committee of the Judiciary Conference recommendation to it.

If not, this committee may be faced with that recommendation, and with a need to decide whether anything needs fixing.

Thank you, Mr. Chairman.

[The prepared statement of Judge Markey follows:]

STATEMENT

of

HOWARD T. MARKEY
Chief Judge

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

before

THE SUBCOMMITTEE
COMMITTEE ON APPROPRIATIONS

House of Representatives

February 6, 1990

Mr. Chairman, I am pleased to appear before the Committee for the seventeenth time.

Filings in the court during the last statistical year increased by 9.6 percent. Among the larger increases were those from the district courts, representing the most complex cases and thus involving the most judicial effort.

As in the past, the court has prepared a budget limited strictly to need. Increases in mandatory items, over which the court has no control, total $650,000, or 69 percent of the total requested increase. The mandatory increase includes $94,000 for full year cost of 7.9 percent judges' pay increase effective February 1, 1990. The increase for eight months was absorbed in 1990, however the full year cost is required in fiscal year 1991; $117,000 for full year cost of 3.6 percent pay increase for judicial employees effective January 1990; $4,000 for annualization of health benefits effective January 1990; $47,000 for within-grade salary advancements; $12,000 for one additional compensable day;

$240,000 for nine months of judges' fiscal year 1991 25 percent pay increase effective January 1, 1991; $113,000 for nine months of federal employees pay increase of 3.5 percent effective January 1, 1991; $40,000 for travel and miscellaneous services and supplies resulting from a 4 percent inflation factor with the exception of lawbooks, for which an 8 percent increase is anticipated; and a 5 percent GSA rental increase of $143,000.

The amount of $160,000 granted in fiscal year 1990 to cover installation of AIMS has been deleted from our fiscal year 1991 base since it was a one-time appropriation.

The sum of $57,000 is requested to provide a second motions staff attorney ($42,600 for compensation, $11,400 for benefits and $3,000 for equipment). The addition of this position is based on the increased number of motions, currently at a rate of over 2,500 a year.

The sum of $67,000 is again requested to provide one technical assistant (staff attorney) position ($50,000 for compensation, $14,000 for benefits, and $3,000 for equipment). The addition of this position is based on the growth in filings in the court's appellate patent jurisdiction. District court appeals now represent 34 percent of the pending caseload, compared with 20 percent in 1984. Moreover, only 26 percent of these cases are settled or dismissed as compared with 35 percent of other cases. Consequently, an increasing proportion of the court's judicial resources must be devoted to these complex cases, many involving state-of-the-art technology. An additional technical assistant (staff attorney) is needed for the court to keep abreast of the growing caseload in the intellectual property part of its jurisdiction.

These additions will give the court only six of the twelve staff attorneys the court is statutorily authorized, but, in accord with its established policy, the court is continuing to limit its requests to those for which there is a proven need.

The sum of $69,000 is once again requested to provide two library positions ($50,000 for compensation, $14,000 for benefits, and $5,000 for equipment). The addition of these two positions is based on the established judiciary-wide policy that for every six judicial officers there should be one position in the library. Between our court and the Claims Court, both housed in the National Courts Building and served by our one library, there are 35 judges. Based on this ratio, there should be five-plus positions in the library and there are currently only three.

The U.S. Marshals Service has recommended an increase of six court security officers in the National Courts Building complex. The complex, which includes the Tayloe, Cosmos and Dolley Madison Houses, houses the Federal Circuit, the Claims Court and the Federal Judicial Center. The sum of $93,000 is requested to cover our portion of the recommended increase in security officers.

I should be glad, Mr. Chairman, to attempt to answer any question you or the Committee may have in respect to our budget.

Mr. SMITH. Well, thank you for your statement. I have been on this committee, I guess, all those 17 years.

Judge MARKEY. Yes, sir.

Mr. SMITH. And I look forward each year to hearing from you. You don't know for sure yet about next year?

Judge MARKEY. No, sir. It is a tentative recommendation. The chances are it may be deleted, but I have no way of knowing, and I can't live on promises.

JUDGE'S PAY INCREASE

Mr. SMITH. No, you certainly cannot.

Does your budget include the increase for judge's pay?

Judge MARKEY. Yes, sir. We budgeted $240,000, if I remember correctly.

Mr. SMITH. I see.

Judge MARKEY. For that, for the judges' pay.

Mr. SMITH. You are optimistic you are going to keep getting it?

Judge MARKEY. I am looking at one of the guys that may have something to say about it, sir.

Mr. SMITH. I think that most of the questions we have can be answered for the record, but I just want to say that we appreciate your appearing here every year, and, as you indicated, being brief and to the point and working with our staff at all times. We will try to work that way again in the coming year, and maybe you will be back.

Thank you.

Judge MARKEY. I will be glad to respond to any questions staff want to send us in writing.

JUDICIARY OFFICE BUILDING

Mr. SMITH. Have they mentioned anything to you about the new Judiciary office building or the possibility that you might move into that instead of staying where you are?

Judge MARKEY. No, sir. I don't think the chances are that we would ever do so, or need to do so. When the new Judiciary building is ready, it is intended that the Federal Judicial Center move into it. The Judicial Center occupies outlying offices, but its main office is in the Dolly Madison House, and, in effect, you can walk through the walls from our court. It is part of the corner complex. I have always hoped and Chief Justice Burger, at one time, viewed or looked forward to keeping that Dolly Madison House in the judiciary as part of the complex occupied by our court, our court and the Claims Court.

Mr. SMITH. I see. So we may be able to use that space, and we will probably need it by then.

Is GSA charging you more per square foot than they do other people?

Judge MARKEY. I am not totally aware of what they charge other people per square foot, but it is not to be, this is for four floors, $3 million. That is twice as much as two D.C. Court of Appeals, and I don't know how many floors they occupy, but it is a big building, big as ours almost. So I don't really know. It is high-class space. It is in front of the White House. Except we ain't competing with General Motors, I didn't think.

Mr. SMITH. Okay. Thank you, sir.

[The following questions were submitted to be answered for the record:]

Questions Submitted by Congressman Smith

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

QUESTION: **What is the status of AIMS, your new office automation system, for which funds were provided in FY 1990?**

ANSWER: Having been earlier denied AIMS, the court designed its own information system. The plan to convert to AIMS is undergoing continued evaluation. If it be determined that conversion this year would justify the cost, the funds presently appropriated and held for AIMS will be obligated. If not, the funds will be returned.

QUESTION: **You request an increase of $67,000 for an additional staff attorney because District Court Appeals now represent 34 percent of your pending caseload, compared to 20 percent in 1984. What were your staffing levels in 1984 compared to requested staffing levels and what is your total estimated caseload for FY 1991 compared to 1984?**

ANSWER: The requested staffing level for staff attorneys is four, an increase of one over the staffing level of three in 1984 and at present. Staff attorneys for this court must each have both a scientific and a law degree. The total estimated caseload for SY 1990 (the statistical year used within the Judiciary is July 1 through June 30) is 1354 compared to 1126 in 1984 or an increase of 20 percent. Specific and reliable projections for SY 1991 are not possible, but the impact of the additional jurisdiction added by the National Childhood Vaccine Injury Act of 1986, the Veterans Judicial Review Act, and the Whistleblower Protection Act of 1989 will necessarily be a substantial increase. Meanwhile, the present categories of filings will not diminish but can be expected to increase in volume at about the 1984-1990 rate. The additional staff attorney is requested because judges are presently having to wait weeks for assistance with the increase in highly technical cases from the district courts. The request, like the same request last year, is not made in anticipation of increased workload in the future but because of already demonstrated needs that are not being met, in keeping with the court's rigid policy of limiting requests to those for which a need clearly exists.

QUESTION: **Please provide for the record a chart showing the number of filings, by type of filing, since the establishment of your court up to FY 1991 projections.**

ANSWER: Data is available to reliably project the number of filings through June 30, 1990, as appears in this chart:

Filings By Type of Filing For 12 Months Ending June 30.
February 8, 1990

	1983	1984	1985	1986	1987	1988	1989	1990
BCA	33	58	59	63	76	84	96	82
CIT	21	38	34	37	38	56	68	42
CLM	70	158	224	123	121	143	112	166
DCT	172	193	197	244	246	301	339*	340*
ITC	2	7	15	13	11	18	11	5
MSB	242	524	1797	545	683	537	590	589
PTO	141	135	133	124	108	119	151	126
RIT	12	13	13	14	63	36	49	34

Legend:
BCA - Boards of Contract Appeals
CIT - Court of International Trade
CLM - Claims Court
DCT - District Courts
ITC - International Trade Commission
MSB - Merit Systems Protection Board
PTO - Patent and Trademark Office
RIT - All Writs Act

*Not only have district court cases increased greatly in number, but their technological complexity causes each of them to consume more judge and staff attorney time than a case from any other category.

QUESTION: What would be the impact on the court if this staff attorney position and the motions staff attorney position were denied?

ANSWER: The impact would be to continue a growing delay in the administration of justice. As indicated, staff attorneys of this court are both technically and legally qualified. They comment on each published opinion to help assure against internal conflict in the court's decisions, and they are on call to assist a judge faced with a particularly complex case for which they have particular expertise. With only three on board, it has been found necessary on too many occasions to forego the consistency-checking action or to delay the case unduly and to require a judge to wait an unacceptable length of time for assistance. Motions presented to the motions staff attorney have increased over the last 3 years from 900 to 1000 to 1120. That load is simply too great for one person even if constantly present. As it is, a judge or a staff attorney must drop regular assignments and step in whenever our one motions staff attorney is on leave or ill. The request for one staff attorney and one motions staff attorney is minimal and is based only on proven need; its denial would disserve the interests of justice.

QUESTION: You request two additional library positions in FY 1991. What services are not being provided by your current staffing of three librarians and what would be the impact if these positions were denied?

ANSWER: The library has been minimally staffed since it was established in 1967, when it started with two staff members, both professional librarians. Clerical support in the form of one library technician was added in 1982. While the staff has remained static since then, the staffs of the other 12 Circuit Libraries has increased dramatically, and, based on current Judicial-Conference-approved staffing ratios, the court's library ranks last in the level of staffing, with a staffing ratio of 43 percent. The Congress denied our request for two positions for FY 1990, while it approved 26 positions for the other Circuit libraries. Even adding the two requested positions, the court's library will be staffed at only 71 percent, while no other Circuit Library is staffed at less than 87.5 percent and the overall percentage of the Circuit Library System is 90 percent.

The following services are not being provided or are being inadequately provided:

a. BOOK SELECTION AND PURCHASING. The selection and evaluation of new titles is impeded; necessary new books and subscriptions are not purchased on a timely basis; current materials requiring supplementation are often not updated on a timely basis, resulting in denial to the judges of the most current information needed for accomplishing the mission of the two courts served by the library.

b. CATALOGING AND BOOK PROCESSING. New books and subscriptions cannot be timely cataloged and added to the library collection; internal order records are not being updated to reflect all purchases for inventory and budget purposes; a constant backlog of new materials results from lack of a full-time professional to accomplish and supervise these tasks.

c. BINDING. Law reviews are not being bound on a regular basis; lack of regular binding has resulted in issues lost or stolen, the replacement of which costs staff time and money. A paraprofessional would oversee the establishment of a routine binding procedure.

d. PLANNING AND AUTOMATION. Planning for future requirements and services to the judges and their staffs cannot be accomplished. Automation has become a key element in the delivery of information services with new technologies and databases constantly becoming available. The current library staff does not have the time required to evaluate these new technologies.

The denial of the two requested library positions would have the dual impact of continuing the unfairly low staffing of the court's library and the consequent denial of the selection, purchasing, cataloging, processing, binding, planning, and automation services described above.

TUESDAY, FEBRUARY 27, 1990.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

WITNESSES

RICHARD S. ARNOLD, JUDGE, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT

WILLIAM G. YOUNG, JUDGE, U.S. DISTRICT COURT, MASSACHUSETTS

L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

DON CHAMLEE, CHIEF, PROBATION DIVISION

E.L. STOORZA, ASSISTANT DIRECTOR FOR ADMINISTRATION AND TECHNOLOGY

Mr. SMITH. The next item the committee will consider this morning is the Courts of Appeals, District Courts and Other Judicial Services. The request is $1,643,120,000 for salaries and expenses, $167,580,000 for defender services, $57,997,000 for fees and expenses of witnesses, and $66,583,000 for court security. At this point in the record, we will insert the justification materials submitted in support of this request.

[The justifications follow:]

PROPOSED SUPPLEMENTALS
FISCAL YEAR 1990

Appropriation	1990 Presently Available	1990 Revised Estimate	1990 Proposed Supplemental
Courts of Appeals, District Courts, and Other Judicial Services:			
Salaries and Expenses	$1,336,480,000	$1,359,230,000	$22,750,000
United States Sentencing Commission	6,445,000	7,145,000	700,000
Total			$23,450,000

THE JUDICIARY
COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses," $22,750,000.

Presently available (Including pay cost supplemental of $5,253,000)	$1,336,480,000
Proposed supplemental	22,750,000
Revised estimate	$1,359,230,000

Program and Financing

	1990 Presently Available	1990 Revised Estimate	1990 Proposed Supplemental
Program by activity:			
Direct program:			
Court automation support	$ 6,840,000	$ 6,840,000	$ .....
Salaries of judges	136,331,000	136,331,000	.....
Salaries of supporting personnel	714,679,000	714,679,000	.....
Expenses of operation and maintenance of the courts . .	244,577,000	267,327,000	22,750,000
Space and facilities	249,753,000	249,753,000	.....
Total direct program	1,352,180,000	1,374,930,000	22,750,000
Reimbursable program	44,416,000	44,416,000	.....
Total obligations	1,396,596,000	1,419,346,000	22,750,000
Financing:			
Offsetting collections from:			
Federal funds	- 12,806,000	- 12,806,000	.....
Trust funds	- 2,500,000	- 2,500,000	.....
Non-Federal sources	- 29,110,000	- 29,110,000	.....
Unobligated balance, start of year	- 3,100,000	- 3,100,000	.....
Unobligated balance, end of year	500,000	500,000	.....
Budget authority	1,349,580,000	1,372,330,000	22,750,000
Appropriation, Permanent Indefinite (Special Fund)	- 13,100,000	- 13,100,000	.....
Appropriation, Definite	1,336,480,000	1,359,230,000	22,750,000
Relation of obligations to outlays:			
Obligations incurred, net	1,352,180,000	1,374,930,000	22,750,000
Receivables in excess of obligations, start of year . . .	- 11,390,000	- 11,390,000	.....
Obligated balance, start of year	103,762,000	103,762,000	.....
Obligated balance, end of year	- 118,045,000	- 120,031,000	- 1,986,000
Outlays	$1,326,507,000	$1,347,271,000	$20,764,000

Analysis by Object Class
(Dollar amounts in thousands)

	1990 Presently Available	1990 Revised Estimate	1990 Proposed Supplemental
11 Personnel compensation	$ 708,585	$ 708,585	$ .....
12 Personnel benefits	148,253	148,253	.....
13 Benefits and former personnel	200	200	.....
21 Travel and transportation of persons	21,986	21,986	.....
22 Transportation of things	1,989	1,989	.....
23 Rental payments to GSA	240,331	240,331	.....
Rental payments to others	773	773	.....
Communications, utilities, and miscellaneous charges.	60,716	60,716	.....
24 Printing and reproduction	7,616	7,616	.....
25 Other services	71,050	71,050	.....
26 Supplies and materials	15,250	15,250	.....
31 Equipment	75,411	98,161	22,750
42 Insurance claims and indemnities	20	20	.....
Subtotal	1,352,180	1,374,930	22,750
Reimbursements	+ 44,416	+ 44,416	.....
Total obligations	$1,396,596	$1,419,346	$22,750

Justification

This supplemental request provides for additional appropriated funding required in fiscal year 1990 to replace the reduced income resulting from revised estimates of fee collections.

The Judiciary had estimated that $61,000,000 of the requirements for the "Salaries and Expenses" appropriation in fiscal year 1990 could be offset by fee collections. Revised estimates indicate that a shortfall of $22,750,000 in fee collections will occur in fiscal year 1990. Estimates of income from registry administration fees had been based on an assessment of three percent. The current assessment is equivalent to approximately one percent at an annual return rate of 8 percent. Additionally, estimates for bankruptcy filing fee collection and collections of fees for bankruptcy motions were originally estimated at the level of a full year's collections. Since collections began 30 days after the fiscal year 1990 appropriation bill was signed, the estimated income is reduced by 25 percent.

The additional appropriated funds of $22,750,000 will be required to support the increased workload in fiscal year 1990, especially as related to drug enforcement, treatment, and court automation.

THE JUDICIARY

Summary of Budgetary Requirements for Fiscal Year 1991
(Dollars in thousands)

	Appropriated 1990	Proposed Supplementals	Adjusted Appropriation 1990	Proposed Increase	Estimate 1991
Supreme Court	$ 21,571	$ 63	$ 21,634	$ 1,043	$ 22,677
Court of Appeals for the Federal Circuit	8,709	.....	8,709	1,057	9,766
Court of International Trade.	8,191	.....	8,191	647	8,838
Courts of Appeals, District Courts, and Other Judicial Services:					
Salaries and Expenses	1,331,227	28,003	1,359,230	283,890	1,643,120
Defender Services	126,461	.....	126,461	41,119	167,580
Fees of Jurors & Commissioners. .	57,997	.....	57,997	0	57,997
Court Security.	57,889	.....	57,889	8,694	66,583
Subtotal for Courts of Appeals, District Courts, and Other Judicial Services.	1,573,574	28,003	1,601,577	333,703	1,935,280
Administrative Office of the United States Courts.	33,670	.....	33,670	4,817	38,487
Federal Judicial Center	12,485	.....	12,485	3,381	15,866
Judicial Officers' Retirement Fund. . .	6,428	.....	6,428	(1,428)	5,000
Total, The Judiciary	1,664,628	28,066	1,692,694	343,220	2,035,914
United States Sentencing Commission . .	6,445	700	7,145	2,155	9,300
Grand Total	$1,671,073	$28,766	$1,699,839	$345,375	$2,045,214

THE JUDICIARY

PROPOSED SUPPLEMENTALS, FISCAL YEAR 1990
(Dollars in thousands)

	Program	Pay Costs
Supreme Court	$	$ 63
Court of Appeals, District Courts, and Other Judicial Services:		
Salaries and Expenses	22,750	5,253
Subtotal	22,750	5,316
United States Sentencing Commission	700	.....
TOTAL	$23,450	$5,316

THE JUDICIARY
Summary of Positions

	1989 Actual	1990 Estimate	1991 Estimate	1991 Over 1990
Supreme Court	352	352	352	...
Court of Appeals for the Federal Circuit	97	99	103	4
Court of International Trade	93	93	86	(7)
Court of Appeals, District Courts, and Other Judicial Services	20,850	22,897	24,746	1,849
Administrative Office of the United States Courts	617	614	614	...
Federal Judicial Center	98	98	108	10
Subtotal, The Judiciary	22,107	24,153	26,009	1,856
United States Sentencing Commission	69	100	120	20
Total number of full-time permanent positions	22,176	24,253	26,129	1,876
Total compensable workyears:				
Full-time equivalent employment	20,981	22,898	24,831	1,933
Full-time equivalent of overtime and holiday hours	17	8	8	...
Reimbursable:				
Total number of full-time positions	22	206	257	51
Total compensable workyears: Full-time equivalent employment	20	164	229	65

THE JUDICIARY
COMPARATIVE OF OBLIGATIONS BY OBJECT CLASSIFICATION
(in thosands of dollars)

	1989 Actual	1990 Estimate	1991 Estimate
Personnel services and benefits			
11 Personnel compensation:			
Full-time permanent	$ 687,905	$ 729,877	$ 876,132
Other than full-time permanent	17,663	46,089	47,239
Other personnel compensation	569	568	626
Special personnel services payments	59,160	62,358	64,735
Total personnel compensation	765,297	838,892	988,732
12 Personnel benefits	124,471	167,869	197,754
13 Benefits for former personnel	483	2,727	227
Total personnel services and benefits	890,251	1,009,488	1,186,713
Contractual services and supplies			
21 Travel and transportation of persons	42,761	49,165	55,836
22 Transportation of things	1,972	2,277	2,401
23 Rental payments to GSA	238,583	256,674	286,521
23 Rental payments to others	1,191	1,616	1,786
23 Communications, utilities, and miscellaneous charges	54,831	67,181	70,739
24 Printing and reproduction	8,893	9,167	9,987
25 Other services	174,817	234,136	321,137
26 Supplies and materials	27,265	17,563	20,264
Total contractual services and supplies	550,313	637,779	768,671
Acquisition of capital assets			
31 Equipment	61,537	115,657	132,806
Grants and fixed charges			
41 Grants, subsidies, and contributions	12,603	19,447	24,220
42 Insurance claims and indeminities	2,321	3,949	5,021
Total grants and fixed charges	14,924	23,396	29,241
Total obligations	1,517,025	1,786,320	2,117,431
Less: Reimbursements	- 6,170	- 52,471	- 65,735
Direct obligations	1,510,855	1,733,849	2,051,696
Unobligated balance	- 46,442	- 20,910	1,018
Budget authority	$1,464,413	$1,712,939	$2,052,714

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
SUMMARY COMPARING FISCAL YEAR 1991 BUDGETARY REQUIREMENTS TO 1990 APPROPRIATIONS
(Dollar amounts in thousands)

	1990			1991				
Appropriation	Appropriation (enacted to date	Proposed — Program Supplemental	Proposed Pay Cost Supplemental	Budget Authority	Adjustments to Base	Other Increases	Total Increase in Requirements	Fiscal Year 1991 Request
Salaries and Expenses...........	$1,331,227	$22,750	$5,253	$1,359,230	$174,390	$109,500	$283,890	$1,643,120
Defender Services...........	126,461	.....	.....	126,461	38,819	2,300	41,119	167,580
Fees of Jurors and Commissioners......	57,997	.....	.....	57,997	.....	.....	.....	57,997
Court Security.....	57,889	.....	.....	57,889	5,546	3,148	8,694	66,583
Totals........	$1,573,574	$22,750	$5,253	$1,601,577	$218,755	$114,948	$333,703	$1,935,280

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
SUMMARY OF PERMANENT POSITIONS

Appropriation	Fiscal Years						Estimated		1991 over 1990	
	1984	1985	1986	1987	1988	1989	1990	1991	Number of Positions	Percent Change
Salaries & Expenses[1].	...	...	...	...	20,154	20,191	22,110	23,959	1,849	8.4
Salaries of Judges[2]..	748	747	979	1,031	...	...	...	...	...	...
Salaries of Supporting Personnel[2].........	11,433	12,489	16,013	17,839	...	...	...	...	...	...
Defender Services.....	364	384	416	453	515	642	764	764	...	...
Bankruptcy Courts, Salaries & Expenses.	2,519	2,842	...	...	...	...	...	...	N/A	N/A
Court Security........	...	13	15	15	15	17	23	23	...	...
Special Rail Reorganization Court......	41	41	41	...	...	...	...	...	N/A	N/A
Total...........	15,020	16,516	17,464	19,338	20,684	20,850	22,897	24,746	1,849	8.1

[1] The appropriations 'Salaries of Judges' and 'Salaries of Supporting Personnel' were consolidated under this heading in 1988.

[2] For fiscal year 1986 the Congress eliminated 'Bankruptcy Courts, Salaries and Expenses' as a separate appropriation, merging the components into four other appropriations. Of these, the scope of the 'Salaries of Judges' appropriation was expanded to include 232 bankruptcy judgeships and 'Salaries of Supporting Personnel' expanded to include 3,101 bankruptcy judgeship staff and clerks' office positions.

General Statement

This section provides an overview of the Judiciary's fiscal year 1991 budget request for the accounts which relate to the courts of appeals, district courts, and bankruptcy courts. The caseload of these courts is a most important factor in determining the budget requests for the accounts included under this heading and is, therefore, shown on the following pages. Details of each account are provided in the appropriate section of this budget.

The estimate for 1991 is $1,935,280,000, an increase of $333,703,000, or 20.8 percent over 1990, as adjusted for proposed supplementals and including the 1991 COLA pay increase. Adjustments to base, i.e., the increased cost of travel, telephone rates, space rental, printing, supplies, lawbooks, and furniture and furnishings, account for $218,755,000, or 65.6 percent of this increase. Resources for workload increases and new program initiatives, e.g., expansion of automated systems, etc., account for the remaining 34.4 percent of the increase. New positions included in the request total 1,849 represent an increase of 8.1 percent.

United States Court of Appeals

Cases Commended

In 1989, the 12 regional courts of appeals continued to report record levels of activity, but the rate of increase was not as great from 1988 to 1989, as it was the previous 12 months. Two courts again showed filing decreases during the year, while nationwide filings rose 4.1 percent to another all time high of 39,927 appeals. Only four out of eight categories of appeal cases increased in 1989, for a total of 1,582. The category of "Other Private Civil Petitions" accounted for the largest number of appeals of any, but amounted to 325 less than the previous year. Criminal petitions nearly doubled, with an increase of 1,963, or 873 more than the growth that occurred from 1987 to 1988 and amounts to an 80 percent increase. Private Prisoner Petitions rose by 180, but less than half the previous year's level of 392. Administrative Appeals dropped by 319, for a 10 percent decrease from 1988.

The total increase of 1,582 cases will exert more pressure on finite court resources, and, with the anticipated growth in prisoner petitions, the expected increase in defendant appeals due to the implementation of Federal sentencing guidelines, and an expected dramatic rise in habeas corpus (death penalty) cases, demands on court resources will continue to increase.

Cases Terminated

In fiscal year 1989, terminations increased 3.2 percent to 37,652. The D.C. Circuit and the Fourth and Ninth Circuits reported decreases in dispositions during the year. The Ninth Circuit is the most heavily loaded Court of Appeals in the Nation, with 1,062 more appeals filed than the next case laden Circuit, which is the Fifth. The number of pending appeals rose to 30,674 on September 30, up eight percent from a year ago.

Table I below, shows the number cases commenced by category. Table II shows the number of cases terminated by circuit. The graph on page 4.9 of this section displays the trend in appellate caseload, filings, terminations, and number of cases pending, end of year, since 1980.

Table I
Courts of Appeals Workload
(cases commenced by category)

Case Category	1988	1989	Difference + or -
Criminal	6,436	8,399	+1,963
U.S. Prisoner Petitions	1,997	2,118	+ 121
Other U.S. Civil	4,267	4,354	+ 87
Private Prisoner Petitions	7,343	7,523	+ 180
Other Private Civil	13,327	13,002	- 325
Bankruptcy	1,214	1,100	- 114
Administrative	3,113	2,794	- 319
Original Proceedings	648	637	- 11
Totals	38,345	39,927	+1,582

Table II
Courts of Appeals Workload
(case terminations)

Circuit	1988 Term.	1989 Term.	Difference + or -	Percent Change
D.C.	1,694	1,675	-9	- 0.5
1st	1,182	1,363	+181	+15.3
2nd	2,939	2,991	+52	+ 1.8
3rd	2,992	3,070	+78	+ 2.6
4th	3,207	3,002	-205	- 6.4
5th	4,244	4,558	+314	+ 7.4
6th	3,923	4,282	+359	+ 9.1
7th	2,088	2,238	+150	+ 7.2
8th	2,270	2,450	+180	+ 7.9
9th	6,143	5,620	-523	- 8.5
10th	1,994	2,372	+378	+18.9
11th	3,831	4,031	+200	+ 5.2
Totals	36,497	37,652	+1,155	+ 3.2

United States District Courts

Aggregate filings in the district courts in fiscal year 1989 (271,420), declined by 13,137 cases compared to the total processed in fiscal year 1988 (284,557). Excluding transfer cases, criminal case filings rose only slightly from 43,607 in 1988, to 45,735 by September 30, 1989, an increase of 4.8 percent. Civil cases filings on the other hand, decreased from 240,950 in 1988 to 225,685 at the close of fiscal year 1989.

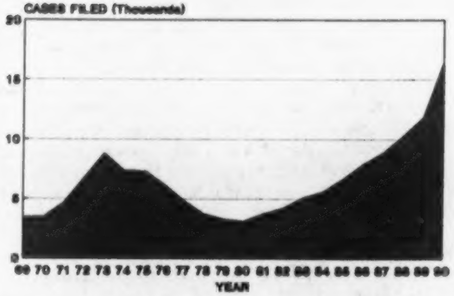
Criminal Case Filings

The increase in criminal cases marked a sizeable reverse in direction for some categories cited in the Judiciary's appropriation request last year. In fiscal year 1988, homicides, robbery, and immigration violations had reached a five year low. In 1989, the polarity was reversed in all three categories. In addition the drug violations and miscellaneous general offenses such as drunk driving and weapons and firearms violations continued to climb. By September 30, 1989, drug violation cases rose by 1,701 cases over the previous year alone to a total of 12,302. Homicides, as represented by murder in the 1st and 2nd degree and manslaughter showed the sharpest increase in five years. Robbery jumped by 139 cases over the previous year to 1,374 and the number of immigration cases climbed to 2,039, also the highest figure in five years. Under the category 'Federal Statutes', which dropped overall, violations of agricultural and conservation acts dropped by 16.7 percent, possibly reflecting an increased awareness on the part of the public regarding environmental concerns. Civil rights violations also declined 13.3 percent. Contempt cases showed the sharpest increase, as they rose from 63 to 153, or 142.9 percent, with Food and Drug Act cases up 79 percent, migratory bird violations up 73 percent and national defense laws up 36.7.

The 'Criminal Drug Cases' graph shown at the end of this section displays the peaks and valleys in the number of cases prosecuted over the past 22 years. Prosecutions rose rapidly following the passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the hiring of 300 more agents by the Bureau of Narcotics and Dangerous Drugs. With the advent of the Drug Enforcement Administration and some changes in prosecution policies, case numbers dropped because prosecutors upgraded the 'quality' of prosecution as they targeted important drug dealers. The increase in drug cases, which began in 1980, is attributed to the massive increase in the employment of assistant United States Attorneys; a halt in the decline in the number of FBI and DEA agents; and the establishment of the Organized Crime Drug Enforcement Task Forces, which numbered an additional 1,200 positions by October 1983. Political support for additional effort culminated in the passage of the Anti-Drug Abuse Act of 1986 and the hiring of 419 more DEA agents. By the close of 1987, 240 more federal prosecutors were added and the number of cases continued to increase sharply. The impact of all of this activity was to increase, by approximately 1,400, the Judicial caseload in fiscal year 1988 and by 1,701 in 1989. The graph shows the trend in drug related caseload.

Excluding transfers, 63,027 criminal defendants were handled by the courts in fiscal year 1989, representing 1.38 defendants per case. Pending cases remaining for adjudication on October 1, 1989, amounted to 32,139 up from 28,315, an increase of 3,824 cases, or a 13.5 percent. Termination figures improved during 1989, rising by 1,125 to a total of 41,864, as of September 30, 1989.

CRIMINAL DRUG CASES
(1990 estimated)



Civil Case Filings

The 225,685 civil cases handled by the district courts in fiscal year 1989, amounted to 15,265 less than the number for fiscal year 1988. They ran the gamut from contract actions and personal injury cases, to banks and banking matters, property and commerce disputes and social security laws. The case category that accounted for the largest numerical increase in matters adjudicated last year, personal injury suits alleging damage from asbestos, completely reversed field and dropped by 4,008 instead of climbing 4,851 as it did during 1988. This represents a drop in the number of asbestos cases of nearly 34 percent. Veterans overpayment cases once again suffered the largest drop for the second year in a row, going from 12,968 in 1988, to 7,372, in 1989, for a percentage decrease of 43.1 percent.

District court cases are filed as the people desire to file them, in a never ending stream that reflects their problems and their desire to obtain a true measure of justice with reasonable dispatch. Tort actions also fell in number from 45,909 on September 30, 1988, to 40,235 one year later. Bankruptcy cases appealed to the district courts amounted to 4,799 by the end of fiscal year 1989, a reduction of 1,230. Civil rights matters dropped by 258 cases in fiscal year 1989.

Banks and banking were involved in 184 more actions in the courts, in 1989, than in 1988. This is the second year in succession that such cases have increased sharply and the 885 cases handled in 1989 represent a 67.6 percent increase since the end of fiscal year 1987, when such cases amounted to only 528. Environmental lawsuits rose at a steeper rate in 1989, than in 1988, with 92 more cases filed in this last fiscal year than in the previous one, for a 10.6 percent increase. Civil Prisoner Petitions climbed from 39,771 to 41,499, a growth of 1,728 and Other Forfeiture and Penalty Suits, in which forfeiture against drug dealers is involved, increased more than twice as much as they did in 1988, as the total grew from 2,920 to 3,641, or by 24.7 percent. Litigation involving Protected Property Rights was reduced in 1989, as the number of filings fell 181 cases, a drop of three percent. Suits filed regarding the nation's social security laws dropped 4,436 cases from the total of 13,762 in fiscal year 1988. This represents a 35.6 percent decrease in such filings in the two years since the end of fiscal year 1987. Disability insurance and supplemental security income accounted for the major share of this decrease in litigation, though every category of case under the Social Security Law designation had fewer actions at law than in the previous year. The constitutionality of various state statutes was attacked less often in the federal district courts in fiscal year 1989, with the number of cases falling from 340 to 317, a percentage decrease of 6.8.

Statistics on civil and criminal caseload in the district courts since 1940, are displayed in Table III. A graphic depiction of the trend in aggregate caseload (civil and criminal) can bee seen on page 4.10.

(Table III Civil and Criminal Caseload Since 1940)

Civil Cases

Fiscal Year	Authorized Judgeships	Filed	Terminated	Pending
1940.......	183	34,734	37,367	29,478
1950.......	218	54,662	53,259	55,603
1960.......	245	59,284	61,829	61,251
1970.......	401	87,321	80,435	93,207
1971.......	401	93,396	86,563	100,040
1972.......	400	96,173	95,181	101,032
1973.......	400	98,560	98,259	101,333
1974.......	400	103,530	97,633	107,230
1975.......	400	117,320	104,783	119,767
1976.......	399	130,597	110,175	140,189
TQ........	398	32,504	27,012	144,584
1977.......	398	133,929	118,711	159,801
1978.......	399	140,544	130,289	170,056
1979.......	516	160,016	146,389	183,683
1980.......	516	171,346	164,359	190,670
1981.......	516	185,626	180,772	195,524
1982.......	515	212,503	196,069	211,958
1983.......	515	250,855	219,779	243,034
1984.......	515[1]	259,549	251,484	251,099
1985.......	575	279,965	273,647	257,417
1986.......	575	246,733	258,382	245,768
1987.......	575	234,467	232,277	246,859
1988.......	575	240,950	237,551	247,004
1989.......	575	225,685	229,943	242,746
Percent change 1989 over:				
1940.....	214.2	549.8	515.4	723.5
1950.....	163.8	312.9	331.7	336.6
1960.....	134.7	280.7	271.9	296.3
1970.....	43.4	158.5	185.9	160.4
1980.....	11.4	31.7	39.9	27.3

Criminal Cases

Fiscal Year	Authorized Judgeships	Filed	Terminated	Pending
1940.......	183	33,401	33,861	9,553
1950.......	218	37,720	37,414	8,181
1960.......	245	29,828	29,864	7,691
1970.......	401	39,959	36,819	20,910
1971.......	401	43,157	39,582	24,485
1972.......	400	49,054	48,101	25,438
1973.......	400	42,434	43,456	24,416
1974.......	400	39,754	41,526	22,644
1975.......	400	43,282	43,515	22,411
1976.......	399	41,020	43,675	19,756
TQ........	398	10,303	9,923	17,904
1977.......	398	39,464	42,575	14,793
1978.......	399	34,255	34,695	14,353
1979.......	516	31,196	31,559	13,990
1980.......	516	29,387	28,606	14,771
1981.......	516	31,280	29,705	16,346
1982.......	515	33,097	31,877	17,566
1983.......	515	35,390	33,664	19,292
1984.......	515[1]	37,829	36,262	20,859
1985.......	575	39,720	38,190	22,389
1986.......	575	42,343	39,470	25,262
1987.......	575	44,246	43,321	25,960
1988.......	575	43,607	40,739*	28,315
1989.......	575	45,735	41,864	32,139
Percent change 1989 over:				
1940.....	214.2	36.9	23.6	236.4
1950.....	163.8	21.2	11.9	292.8
1960.....	134.7	53.3	40.2	317.9
1970.....	43.4	14.5	13.7	53.7
1980.....	11.4	55.6	46.3	117.6

---

[1] Does not include 61 additional judgeships created by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353.

4.7

United States Bankruptcy Courts

Total bankruptcy filings amounted to 656,980, in fiscal year 1989. This was 52,584 more such cases than were filed in 1988, and represents an 8.7 percent growth in the total. Thus, the avalanche that has marked the last few years has continued, and another new high in the country's history has been attained. Business filings amounted to 62,469, in 1989, a drop of 3,653 from 1988. Three of the four Chapters saw reductions, with Chapter 13 registering an increase of 133 cases, for 1.7 percent. Non-business filings grew by 55,874 cases to a total of 594,511. The Ninth Circuit registered 157,150 bankruptcy suits, for 23.9 percent of the U.S. total. The Sixth Circuit was next with 91,808 filings and the third ranking went to the Eleventh Circuit with 80,188 cases. Ranked in terms of the number of cases the remaining Circuits fell as follows: the Fifth ranked 4th, with 63,408; the Seventh ranked 5th, with 63,143; the Tenth ranked 6th, with 52,190; the Fourth ranked 7th, with 42,049; the Eighth ranked 8th, with 41,001; the Second ranked 9th, with 27,115; the Third ranked 10th, with 24,296; the First ranked 11th, with 13,512, and the D.C. Circuit ranked 12th, with 1,120.

Because of the overall increase in filing rates, the number of pending petitions rose to new heights. A total of 892,670 petitions were pending on September 30, up 8.3 percent from a year ago.

The total for adversary proceedings declined from 56,648, in 1988, to 53,165 in 1989, a reduction of 6.1 percent. Dispositions dropped from 63,319 in 1988, to 54,239,a reduction of 9,080 cases or 14.3 percent. Pending adversary cases also dropped from 89,207 in 1988, to 88,133 in 1989.

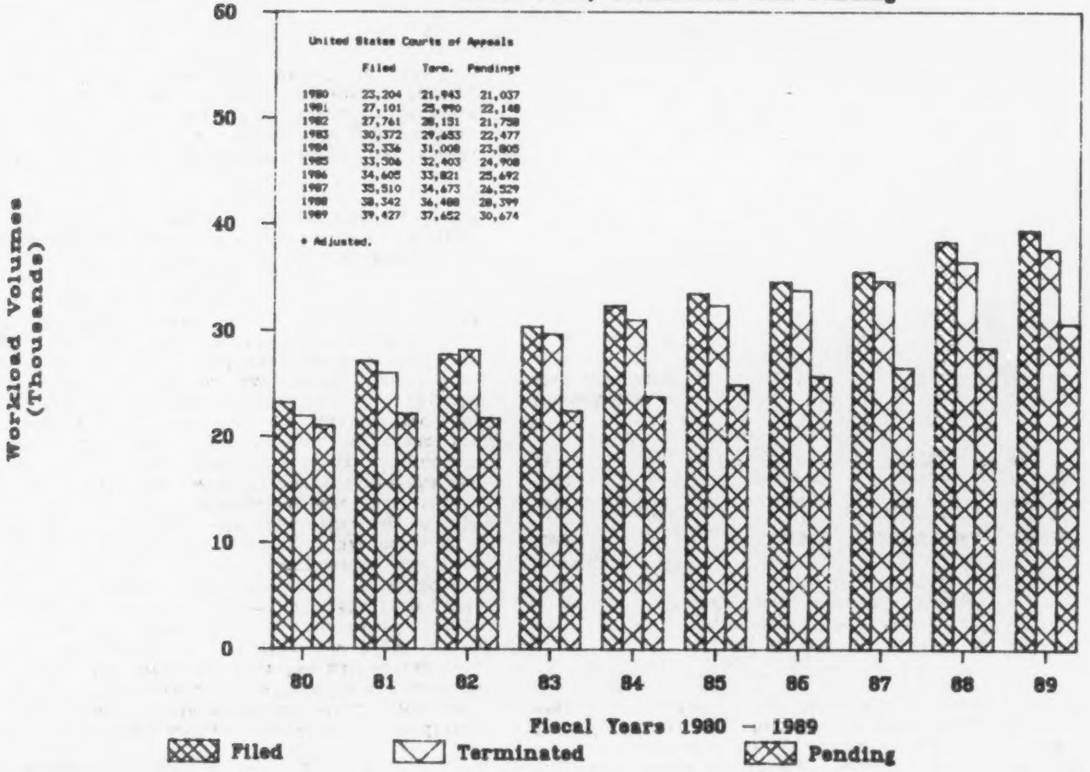
The table below provides a comparison of the bankruptcy petition workload during fiscal years 1987, 1988 and 1989. A graph on page 4.11 shows bankruptcy courts activity from fiscal year 1980 through fiscal year 1989.

U. S. Bankruptcy Courts
Bankruptcy Code Petitions
Filed, Terminated, and Pending

Fiscal Year	Filings	Terminations	Pending
1987...............	568,430	512,875	809,015
1988...............	604,396	586,442	824,353
1989...............	656,980	588,663	892,670
Percent Change 1989 over 1987.....	15.6	14.8	10.3

United States Courts of Appeals

Cases Filed, Terminated and Pending



United States Courts of Appeals

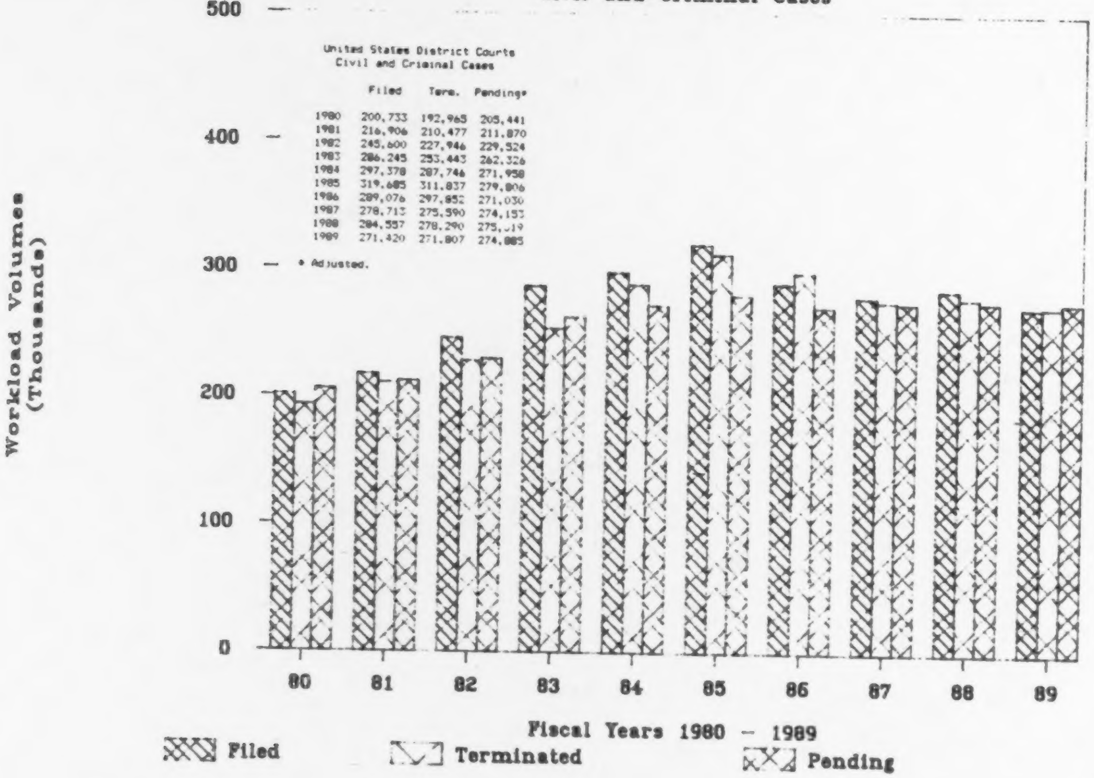
	Filed	Term.	Pending*
1980	23,204	21,943	21,037
1981	27,101	25,990	22,148
1982	27,761	28,151	21,758
1983	30,372	29,653	22,477
1984	32,336	31,008	23,805
1985	33,306	32,403	24,908
1986	34,605	33,821	25,692
1987	35,510	34,673	26,529
1988	38,342	36,488	28,399
1989	39,427	37,652	30,674

* Adjusted.

4.9

United States District Courts

Civil and Criminal Cases



United States District Courts
Civil and Criminal Cases

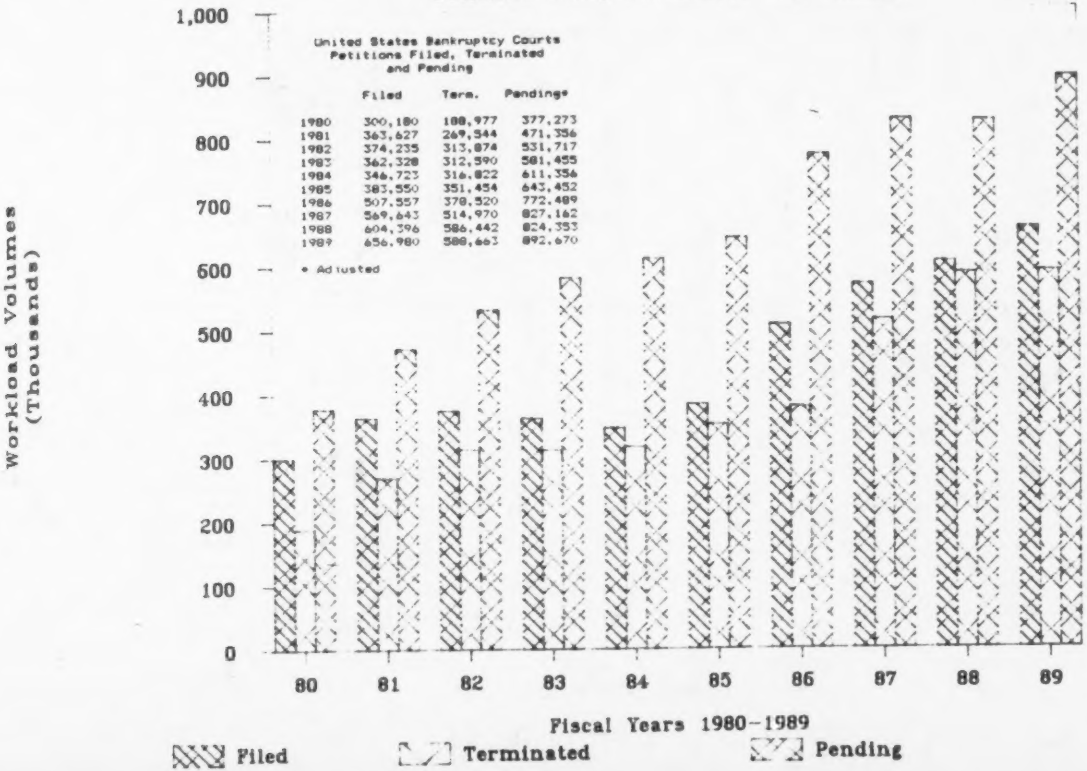
	Filed	Term.	Pendings*
1980	200,733	192,965	205,441
1981	216,906	210,477	211,870
1982	245,600	227,946	229,524
1983	286,245	253,443	262,326
1984	297,378	287,746	271,958
1985	319,685	311,837	279,806
1986	289,076	297,852	271,030
1987	278,713	275,590	274,153
1988	284,557	278,290	275,019
1989	271,420	271,807	274,885

* Adjusted.

4.10

United States Bankruptcy Courts

Petitions Filed, Terminated and Pending



United States Bankruptcy Courts
Petitions Filed, Terminated
and Pending

	Filed	Term.	Pending*
1980	300,180	188,977	377,273
1981	363,627	269,544	471,356
1982	374,235	313,874	531,717
1983	362,328	312,590	581,455
1984	346,723	316,822	611,356
1985	383,550	351,454	643,452
1986	507,557	378,520	772,489
1987	569,643	514,970	827,162
1988	604,396	586,442	824,353
1989	656,980	588,663	892,670

* Adjusted

4.11

Offsetting Collections and the Special Fund Appropriation Available to the Judiciary

Due to the increasing scarcity of Federal resources the Congress has, in recent years, authorized the assessment of new fees thereby increasing the amount of fees and reimbursements from trust funds for services performed.

Offsetting Collections from Federal Funds:

Immigration Examinations Fee Account

As authorized in 8 U.S.C. 1356(m), deposits in excess of $50,000,000 in the Immigration Examinations Fee Account are available to reimburse any appropriation for expenses arising from the provision of immigration adjudication and naturalization services and the collection, safeguarding and accounting of fees deposited. Reimbursement to the Judiciary is based on the cost of personnel, automation services and miscellaneous other expenses incurred in the processing of naturalization certificates and the collection of fees by the courts.

Crime Victims Fund

The Crime Victims Fund was established by the Congress in 1984 to compensate and assist victims of violent crime. Fines and special assessments collected by the Judiciary and the Department of Justice from defendants convicted in Federal criminal cases constitute the source of funds for claims, grants and programs authorized in the Act. In 1988, the Congress amended section 1402(c) of 42 U.S.C. 10601, allowing the first $2,200,000 above the prescribed ceiling on collections to offset administration costs in the Judiciary. The collections cap governing availability in fiscal year 1991 is $125,000,000.

Registry Administration Account

The Judiciary Appropriation Act for 1989 (Public Law 100-459), authorized the establishment of a "Registry Administration Account" in the Treasury as a special fund for the deposit of monies collected by the Judiciary as a charge for services rendered in administering accounts related to non-criminal and bankruptcy cases. The Judicial Conference adopted a fee equal to the interest earned on the funds deposited in the first 45 days. Funds from the Registry account are available until expended and may be used to reimburse any of the Judiciary's appropriations for the Courts of Appeals, District Courts and Other Judicial Services and the Administrative Office of the United States Courts for expenses incurred.

Offsetting Collections from Trust Funds:

Child Vaccine Fund

The National Childhood Vaccine Injury Act of 1986 created a special fund to pay judgments awarded under the Act. The law authorizes reimbursement to the Judiciary, not to exceed $2,500,000, for administrative costs incurred by the special masters responsible for processing and adjudicating cases.

Offsetting Collections from Non-Federal Fund

Fees arising in bankruptcy cases

1. Noticing fee

Section 404(a) of the Judiciary's Appropriation Act for 1990 (Public Law 101-162), authorizes the collection of fees for the preparation and mailing of notices in bankruptcy cases. The amount prescribed by the Judicial Conference is fifty cents per notice.

2. Filing Fee

The General Provisions of the Judiciary's 1990 Appropriation Act contain a statutory change to 28 U.S.C. 1930(a)(1) increasing the filing fee for chapter 7 and 13 cases to $120.00. The added $30.00 is credited to a special fund which may be used to reimburse any appropriation for expenses incurred.

3. New Fees

The Appropriation Act for 1990 contains a general provision (Section 406(b)), which permits all fees hereafter collected for any service enumerated after item 18 of the bankruptcy fee schedule prescribed by the Judicial Conference pursuant to 28 U.S.C. 1930(b) to be deposited into the special fund established under 28 U.S.C. 1931. These funds are available until expended and may be used to reimburse any appropriation supporting the Courts of Appeals, District Courts, Other Judicial Services and the Administrative Office, for expenses incurred.

In September, 1989, the Conference approved a number of changes to the miscellaneous fee schedule for bankruptcy courts as authorized under 28 U.S.C. 1930(b).

Item 20 - Deconsolidation

This new fee will be charged when any estate filed as a joint petition is later deconsolidated at the request of the debtor. The fee will be equal to one-half of the filing fee which would otherwise be paid for filing a new petition at the time of deconsolidation. The following rates will be applied: $60.00 for a chapter 7 or 13 case; $250.00 for a chapter 11 case; and $100.00 for a chapter 12 case. If the deconsolidating debtor requests the conversion of a chapter 7 or 13 petition to a chapter 11, a fee of $400.00 will be assessed.

Item 21 - Motions

This new fee will be charged whenever a party files a motion under 11 U.S.C. 362(d) to vacate or modify the automatic stay provided by 11 U.S.C. 157(d) to withdraw any case or proceeding referred to a bankruptcy judge by the district court; or files a motion requiring a trustee or debtor in possession to abandon property of the estate as provided by Bankruptcy Rule 6007(b). The amount assessed each motion will be $60.00.

Item 22 - Cross Appeal Docketing

This new fee will be charged whenever an appellee files a cross appeal within the seven days provided by Bankruptcy Rule 8006. The amount assessed will be $100.00.

Special Fund Appropriation (permanent, indefinite):

Civil Filing Fees

One-half of the $120.00 filing fee for all civil actions, except applications for habeas corpus where the fee is $5.00 and cases initiated by agencies of the United States Government, is credited to the Judiciary's Salaries and Expenses appropriation (28 U.S.C. 1931) to offset operations and maintenance expenses. Fees collected by the courts are deposited into a special fund maintained by the Treasury and, unlike other offsetting collections, are made available through a permanent, indefinite appropriation.

Summary

The following table lists offsetting collections by type, the amounts credited and used in fiscal year 1989, and estimates for fiscal years 1990 and 1991:

	FY 1989 Actual	FY 1990 Est.	FY 1991 Est.*
Offsetting collections from:			
Federal funds:			
Immigration Examinations Fee Account.................	$966	$862	$900
Crime Victims Fund............	---	2,200	2,200
Registry Administration Account.....................	---	9,744**	12,000
Subtotal................	966	12,806	15,100
Trust funds:			
Child Vaccine Fund............	940	2,500***	2,500
Non-Federal sources:			
Bankruptcy:			
Noticing fees...............	4,022	4,250	4,100
Filing fees.................	---	16,500	22,000
Deconsolidation fees........	---	---	---
Motion fees.................	---	8,360	11,000
Cross appeal docketing fee..	---	---	---
Subtotal................	4,022	29,110	37,100
Special fund appropriation:			
Civil filing fees..............	5,500	13,100***	7,500
Total........................	$11,428	$57,516	$62,200

* Estimates for fiscal year 1991 assume no carry forward in accounts where such action is authorized. (Note: Unused collections or receipts carried forward from one fiscal year to the next are not subject to sequestration.)

** Estimates include amounts carried forward from fiscal year 1989: Registry fund, $2,038,000 and civil filing fees, $5,600,000.

*** Reimbursement level authorized in the Judiciary Appropriations Act, 1990.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

Summary of Requirements

Appropriation 1990 (enacted to date)	$1,359,230,000
1991 Budget Estimate	1,643,120,000
Proposed Increase	283,890,000

Appropriation Language

Courts of Appeals, District Courts, and Other Judicial Services

SALARIES AND EXPENSES

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the Claims Court, bankruptcy judges, magistrates, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, and necessary expenses of the courts, as authorized by law, [$1,287,424,000] $ 1,643,120,000, (including the purchase of firearms and ammunition): of which $ 61,045,000 shall remain available until expended for space alteration projects:

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

Appropriation Language (continued)

[Provided, That such sums as may be available in the fund established pursuant to 28 U.S.C. 1931 may be credited to this appropriation as authorized by section 407(c) of the Judiciary Appropriation Act, 1987 (Public Law 99-591; 100 Stat. 3341-64)]: Provided [further] That of the total amount appropriated, $500,000 is to remain available until expended for acquisition of books, periodicals, and newspapers, and all other legal reference materials, including subscriptions: Provided further, That, notwithstanding any other provision of law, not to exceed $2,500,000 for expenses of the Claims Court associated with processing cases under the National Childhood Vaccine Injury Act of 1986 shall be reimbursed from the special fund established to pay judgments awarded under the Act.

SALARIES AND EXPENSES
FISCAL YEAR 1991
(Dollar amounts in thousands)

1991 Request
Perm.

	1991 Request	
Summary of Changes:	Perm. Positions	Amount
Appropriation 1990 (enacted to date)	22,110	$1,346,974
1990 Sequestered pursuant to P.L. 99-177	...	(15,747)
Proposed supplemental	...	28,003
Budget Authority, 1990	22,110	1,359,230

Page No.	Adjustments to base and built-in changes:		
5.11	1. a. Restoration of losses in fees for 1990 not needed in 1991	...	-22,300
5.11	b. 1990 Restoration of amount sequestered resulting from Budget Reconciliation Act (P.L. 99-177)	...	15,747
	2. Mandatory increases for judges:		
5.11	a. Reduction in vacancy rate for active judges	...	1,370
5.12	b. Senior judges and supporting personnel.	20	4,600
	3. 1990 pay cost increases and other adjustments in compensation:		
5.15	a. Fiscal year 1990 increases for pay costs	...	27,350
5.15	b. Annualization of fiscal year 1990 health benefit costs.	...	900
5.16	c. Cost of within-grade and other salary advancements, including clerks, and probation and pretrial services officers	...	14,760
5.16	d. Extra compensable day in fiscal year 1991	...	2,400
5.16	e. Annualization of fiscal year 1990 Social Security costs	...	450
5.16	f. Federal Employee Retirement Systems (FERS).	...	9,000
5.16	g. Annualization of positions authorized in 1990 (1,910 positions) (nine months).	...	17,750
5.17	h. Annualization of positions authorized by the drug initiative (265 positions) (nine months).	...	8,873
	4. 1991 pay cost increases and other adjustments:		
5.17	a. Pay cost increases for judges, and magistrates (nine months)	...	33,000
5.17	b. Pay raise (nine months) 3.5 percent for supporting personnel.	...	17,500
	5. Adjustment for court operations:		
5.17	a. Furniture and furnishings required for new space.	...	16,200
5.17	b. Lawbooks (inflation).	...	1,770
5.18	c. Other increases in contract rates and charges for services, supplies and equipment (inflation)	...	6,180
5.20	d. Nonrecurring expenses authorized in fiscal year 1990.	...	(8,160)
	6. Reimbursable space and facilities expenses:		
5.23	a. Annualization of space assigned in fiscal year 1990	...	4,900
5.23	b. Increase in space rental costs and building related services and equipment (inflation)	...	10,600
5.25	c. Rental of space delivered in fiscal year 1991	...	11,500
	Subtotal	20	174,390

Page No.	Salaries of Judges and Magistrates:		
	7. Additional positions for magistrates and bankruptcy judges:		
5.27	a. Regular magistrate positions (16) and supporting personnel	65	8,700
5.32	b. Accelerated magistrate positions (6) and supporting personnel (six months)	24	2,370
5.37	c. Recalled bankruptcy judges and supporting personnel	...	2,060
	Subtotal	89	13,130
	Resources for workload increases:		
5.37	8. Additional personnel for circuit executives (5) and staff attorney (33)	38	535
	9. Clerks office personnel: (three months)		
5.42	a. Deputy clerks	552	6,300
5.51	b. Integrated automation support	240	3,260
5.51	c. Criminal Fine Center (Three reimbursable positions)	40	900
5.52	d. Court interpreters	6	150
5.52	e. Court annexed arbitration	...	375
	10. Probation and pretrial services personnel: (three months)	255	4,255
5.53	a. Home confinement	87	1,400
5.64	11. Additional funding for federal sentencing guidelines (probation and pretrial services)	116	1,980
5.64	12. National court library system	28	380
5.66	13. Electronic court recording program	50	740
	14. Additional funding for space and facilities:		
5.67	a. Space alterations to be accomplished in fiscal year 1991	...	9,875
5.72	b. Space alterations deferred in fiscal year 1990	...	10,000
5.72	c. Reimbursable costs of prospectus projects	...	13,800
5.75	d. Long-range facility planning	...	125
	15. Additional funding for probation and pretrial programs:		
5.76	a. Drug dependent offenders program	...	9,250
5.78	b. Mental health treatment program	...	1,125
5.78	c. Contractual support for pretrial services	...	4,250
5.79	d. Contractual support for student pretrial services	...	1,195
5.79	e. Electronic monitoring services	...	3,650
	Subtotal	1,412	73,545

Page No.	Improvements in services and other charges:		
5.79	16. Child care centers	...	1,125
5.79	17. Payments for court appointed counsel to prosecute contempt cases.	...	75
	18. Court automation		
5.79	a. Expansion of automated systems.	...	14,478
5.82	b. Court automation support (48 reimbursable positions).	...	1,755
5.84	c. Training positions.	35	500
5.88	19. Contractual financial audits	...	300
5.88	20. Operational training	...	600
	Subtotal	35	18,833
	Resources for violent crime and drug initiative:		
5.89	21. Deputy clerks (three months)	33	290
5.89	22. Probation/Pretrial	260	3,702
	Subtotal	293	3,992
	Total increases requested	1,849	283,890
	Total appropriation requested, 1991.	23,959	$1,643,120

SALARIES AND EXPENSES

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation*		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Court Automation Support.	...	$ 6,840	...	$ 9,265	...	$ 11,020	...	$ 1,755
Salaries of Judges.	1,038	136,531	1,345	181,746	1,367	183,571	+ 22	+ 1,825
Salaries of Supporting Personnel	21,072	714,479	20,785	807,154	22,592	823,379	+1,807	+ 16,225
Expenses of Operation and Maintenance of the Courts.	...	267,327	...	270,656	...	311,796	...	+ 41,140
Space and Facilities.	...	249,753	...	280,499	...	320,854	...	+ 40,355
Total direct obligations.	22,110	1,374,930	22,130	1,549,320	23,959	1,650,620	+1,829	+101,300
Reimbursable		+ 44,416		+ 54,700		+ 54,700		.....
Total obligations		1,419,346		1,604,020		1,705,320		+101,300
Offsetting collections from:								
Federal funds.		- 12,806		- 15,100		- 15,100		.....
Trust funds.		- 2,500		- 2,500		- 2,500		.....
Non-federal.	...	- 29,110	...	- 37,100	...	- 37,100	...	.....
Unobligated balance, start of year	...	- 3,100	...	- 500	...	- 500	...	....
Unobligated balance, end of year	...	500	...	500	...	500	...	.....
Budget Authority	22,110	$1,372,330	22,130	$1,549,320	23,959	$1,650,620	+1,829	$+101,300
Appropriation, permanent indefinite (special fund). . . .	...	- 13,100	...	- 7,500	...	- 7,500	...	.....
Appropriation, definite	22,110	$1,359,230	22,130	$1,541,820	23,959	$1,643,120	+1,829	$+101,300

*Includes proposed pay cost supplemental of $5,253,000 and a program supplemental of $22,750,000.

SALARIES AND EXPENSES

Object Classification
(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$ 708,585	$ 840,935	$+132,350
12	Personnel benefits	148,253	174,423	+ 26,170
13	Benefits of former personnel	200	200	.....
21	Travel and transportation of persons	21,986	24,186	+ 2,200
22	Transportation of things	1,989	2,089	+ 100
23	Rental payments to GSA	240,331	268,594	+ 28,263
	Rental payments to others	773	806	+ 33
	Communications, utilities, and miscellaneous charges	60,716	63,631	+ 2,915
24	Printing and reproduction	7,616	8,266	+ 650
25	Other services	71,050	139,517	+ 68,467
26	Supplies and materials	15,250	17,650	+ 2,400
31	Equipment	98,161	110,303	+ 12,142
42	Insurance claims and indemnities	20	20	.....
	Subtotal	1,374,930	1,650,620	275,690
	Reimbursements	+ 44,416	+ 54,700	+ 10,284
	Total obligations	$1,419,346	$1,705,320	$+285,974

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Total	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$1,374,930	$1,650,620	$+275,690
Receivable in excess of obligations, start of year. . . .	- 11,390	...	+ 11,390
Obligated balance, start of year.	103,762	120,031	+ 16,269
Obligated balance, end of year.	- 120,031	- 144,099	- 24,068
Outlays.	$1,347,271	$1,626,552	$+279,281

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	22,110	23,959	+1,849
Total compensable workyears:			
Full-time equivalent employment	20,997	22,761	+1,764
Reimbursable:			
Total compensable workyears:			
Full-time equivalent employment	20	20	...

General Statement

Funds appropriated under this heading are for the salaries and benefits of judges and supporting personnel and all operating expenses of the United States courts of appeals, district courts, bankruptcy courts, and Claims Court. In fiscal year 1987, the following appropriation accounts, which are now shown as separate activities, were consolidated into this account: "Salaries of Judges," "Salaries of Supporting Personnel," "Expenses of Operation and Maintenance of the Courts," and "Space and Facilities." For basic statutory authorities, reference is made to the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

Processing of National Childhood Vaccine Injury Act Cases

Technical amendments to the Vaccine Act were passed by the Congress and signed into law by the President on December 19, 1989. Under the technical amendments, the Program was authorized $1.5 million for fiscal years 1990 and 1991. The amendments limit the court to eight special masters and set maximum payment levels for the special masters.

From November 15, 1988 through December 31, 1989, the Office of the Special Masters, United States Claims Court, received 207 vaccine filings. Of these 207 cases, 90 have been disposed of, either by a written report and recommendation for judgement (72 cases), by voluntary dismissal by the parties (17 cases), or by a court ordered dismissal (1 case). Among the cases disposed of, 43 involved the injury of a child and 47 the death of a child. Of the 207 filings received, 200 were for retroactive claims, 7 for prospective claims. As of December 31, 1989, the Office of the Special Masters had 117 pending cases.

The projected workload for the Office of the Special Masters is as yet unclear. Current estimates from petitioners' counsel and government representatives are for 500 filings this fiscal year. However, several factors will affect this estimate. Two of the most significant are the expected increase in publicity for the program and the tight deadline for filing retroactive claims.

The Department of Health and Human Services is charged with informing the public of the availability of the Vaccine Compensation Program. Should they be successful in raising public awareness, an increase in the number of claims filed for both prospective and retroactive claims is expected. However, retroactive cases (cases in which the inoculation was received prior to October 1, 1988) will be accepted for filing through November 15, 1990 only. Therefore, anyone with a retroactive claim who becomes aware of the Program in the near future will have to file his case by November 15, 1990, or lose the chance to participate in the Program. Clearly, an increase in publicity and the requirement for filing retroactive claims by November 15, 1990 could result in a significant increase in the number of filings received throughout fiscal 1990 and into the first one-and-a-half months of fiscal 1991.

With regard to prospective cases (cases with claims involving post-October 1, 1988 inoculations), the estimates have not changed from the 150-220 "awardable" cases per year, as provided by the Centers for Disease Control and the Congressional Budget Office. However, to award the 150-220 cases, the court will likely decide more than that number.

Justification of Changes

Item 1a. Restoration of losses in fees for 1990 not needed in 1991 ($-22,300,000)

In fiscal year 1990 a supplemental of $22,750,000 has been requested. This supplemental was not needed to make up for the short fall in fees in 1990. Since we don't expect a shortfall in 1991 $22,300,000 will not be needed.

1b. 1990 Restoration of Amount Sequestered Resulting from Budget Reconciliation Act ($15,747,000)

As a result of the 1990 Budget Reconciliation Act, $15,747,000 was sequestered in 1990. This amount has been included in the request to restore the sequestered amount to the appropriation base. The sequestered amounts will be restored as follows:

Salaries of supporting personnel	$ 5,215,000
Operation and maintenance	3,339,000
Automation	4,967,000
Space and Facilities	2,226,000
	$15,747,000

Item 2. Mandatory Increases for Judges

Provision has been made for the salaries and related benefits of 1,037 judges: 708 active circuit and district judges; 309 Article III retired (senior) judges; and 20 Article III retired judges pursuant to 28 U.S.C. 371(a). The authority for appointment of circuit and district judges is found under 28 U.S.C. 44(a) and 28 U.S.C. 133. The authority places a limit on the total number of judges appointed but not on the frequency of these appointments. Therefore, the Judiciary has no control over the number of judges appointed to vacant authorized judgeships nor over the number of judges who elect to retire, thus creating a new vacancy while continuing to receive their full salary.

a. Reduction in Vacancy Rate for Active Judges ($1,370,000)

The fiscal year 1990 budget contains funds to support 695 of the 731 Article III circuit and district authorized judgeships (a vacancy rate of 36). As of September 30, 1989, 47 of these judgeships were vacant. Due to the rate at which vacancies are currently being filled, offset by the number of active judges who take senior status, an average vacancy rate of 23 is anticipated for fiscal year 1991. Since funds are available in the 1990 base to support only 695 judges, funding for an additional 13 judges is requested bringing the total to 708 active judges. The amount requested is based on annual salaries and benefits of a District Court Judge ($105,000).

The following table shows the number of Article III judgeships, the average number of vacancies, and the average number of active judges on the roll since 1979 and estimates for 1990 and 1991:

Fiscal Year	Article III Judgeships	Average Vacancies	Average Number of Active Judges
1979	648	113	488
1980	648	73	575
1981	648	45	603
1982	647	36	611
1983	647	30	617
1984	732	40	627
1985	731	100	631
1986	731	59	672
1987	731	48	683
1988	731	43	688
1989	731	40	691

Estimates

1990	731	36	695
1991	731	23	708

b. Senior Judges and Supporting Personnel (20 positions, $4,600,000)

When a judge retires from office pursuant to 28 U.S.C. 371(a), he or she receives an annuity for life equal to the salary in effect at the date of retirement. When a judge retains the office but retires from regular active service pursuant to 28 U.S.C. 371(b) or retires on disability pursuant to 28 U.S.C. 372(a), he or she continues to receive the salary of the office for life. Many of the judges who retire under the provisions of 28 U.S.C. 371(b) continue to render substantial judicial service for a number of years, notwithstanding their retirement.

At the end of fiscal year 1989, 61 judges were eligible to retire; 35 more judges will become eligible in fiscal year 1990, and, another 32 in 1991, for a total of 128 potential retirees.

Of these 128 potential retirees, it is estimated that an average of 7 judges will take senior status during 1991 and continue to render substantial judicial service and thereby retain some, if not all, of their present staff. In addition to the 7 senior retired judges, it is estimated that an average of 2 retired judges under 28 U.S.C. 371(a) will be added to the rolls. These judges have resigned from office and do not require staff. On the average, it is projected that the judicial councils of the circuits will authorize senior judges to retain one and one-half law clerks and one secretary. Based on these assumptions it is estimated that an additional 11 law clerks and 7 secretarial positions will be required to support new senior judges in fiscal year 1991.

The sum of $4,600,000 is requested for 9 senior judges, 11 additional law clerks, 7 secretaries and two court reporter positions to record the proceedings of senior judges in Alabama (Southern) and California (Northern), as approved by the Judicial Conference.

The following table shows the distribution of cost by type of position:

	Number Permanent Positions	Salaries & Benefits	Operation & Maintenance	Tenant Alterations	Total
Judges Requiring Staff Judges (7) & Staff 18	18	1,460	1,120	1,520	4,100
Judges Retired (28 USC 371a) not requiring staffing (2)		200	200[1]	...	400
Court Reporters	2	87	13		100
Total	20	1,747	1,333	1,520	4,600

[1] Furniture for replacement Judges.

Judgeship Summary

Fiscal Year	Average Number of Retired (Senior) Judges Pursuant to 28 U.S.C. 371(b) and 372(a)	Average Number of Retired Judges Pursuant to 28 U.S.C. 371(a)
1978	178	6
1979	179	6
1980	188	5
1981	198	4
1982	219	4
1983	237	5
1984	242	6
1985	258	8
1986	269	10
1987	286	12
1988	294	16
1989	284	17
Estimates		
1990	302	18
1991	309	20

Claims Court Judges

The following table shows the number of Claims Court judgeships, the average number of vacancies, the average number of active judges, and the average number of recalled judges since the Claims Court was created in 1983. Also included are estimates for 1990 and 1991:

Fiscal Year	Claims Court Judgeships	Average Vacancies	Average No. Active Judges	Average No. Recalled Judgeships
1983	16	1	15	2
1984	16	0	16	3
1985	16	1	15	2
1986	16	0	16	1
1987	16	1	15	2
1988	16	0	15	2
1989	16	0	16	2
1990	16	0	16	2
1991	16	0	16	2

The following table shows the number of bankruptcy judgeships, the average number vacancies, and the average number of judges in fiscal year 1986 through 1989 and estimated for 1990 and 1991.

Fiscal Year	Bankruptcy Judgeships	Average Vacancies	Average Number of Bankruptcy Judges
1986	232	5	227
1987	284	39	245
1988	284	5	279
1989	284	5	279
1990	291	5	286
1991	291	5	286

The Federal Magistrates Act of 1968 was designed to create a group of judicial officers which could cull from the ever-growing workload of the United States district courts matters more desirably performed by a lower tier of judicial officers. (S. Rep. No. 371, 90th Cong., 1st Sess., 11 (1967); H.R. Rep. No. 1629, 90th Cong., 2nd Sess., 12 (1968). The jurisdiction of the magistrates was expanded in 1976 and again in 1979 (Pub. L. Nos. 94-577 and 96-82). The judges of the district courts can now assign a greater variety of duties to magistrates in civil and criminal cases.

The Judicial Conference of the United States, in accordance with the provisions of the Federal Magistrates Act, determines the number, locations, and salaries of full-time and part-time magistrates 'as the expeditious administration of justice may require' (28 U.S.C. Section 633(c)). Positions are created and salaries established by the Conference in light of the recommendations of the Director of the Administrative Office, the district courts concerned, and the judicial councils of the circuits.

Fiscal Year	Number of Authorized Magistrates
1989	294
1990	307
1991 estimate	329

	1990 Estimate	1991 Estimate	Difference
Total number of full-time permanent positions:			
Circuit Judgeships.......	156	156	...
District Judgeships......	575	575	...
Claims Court Judgeships..	16	16	...
Bankruptcy Judgeships....	291	291	...
Magistrates..............	307	329	+22
Total full-time positions	1,345	1,367	

Total compensation workyears:			
Full-time equivalent employment.............	1,353	1,387	+31

Salaries of Judges*
Distribution of Obligations
(In thousands of dollars)

	FY 1990	FY 1991	Difference
Article III Judges:			
Circuit...........	$ 17,674	$ 22,815	$ 5,141
District..........	55,105	65,910	10,805
Senior/Retired....	31,190	38,029	6,839
Subtotal.......	103,969	126,754	22,785
Article I Judges:			
Claims Court.....	1,785	1,885	100
Bankruptcy.......	30,577	38,310	7,733
Magistrates......	...	45,696	45,696
Subtotal.......	32,362	85,891	53,529
Total....	$136,331	$212,645	$76,314

*Compensation and benefits.

Salaries of United States Judges as of January 1990 and 1991 respectively are as follows: Article I judges: Claims Court - $96,600/$120,800, Bankruptcy-$88,872/$111,136; and Magistrates - $88,872/$111,136; Article III judges: Court of Appeals-$102,500/$128,100, District Court - $96,600/$120,800.

Item 3. 1990 Pay Cost Increases and Other Adjustments in Compensation

This item contains the fiscal year 1990 pay cost increases and other adjustments in personnel compensation and related benefits, such as within-grade raises and health benefits.

a. Fiscal Year 1990 increase for pay costs ($27,350,000)

(1) Judges and magistrates

The salaries of judges and magistrates were increased 4.12 percent effective on enactment of P.L. 101-194 and an additional 3.6 percent effective on January 1, 1990. The funding for the salary increases for article III Judges in fiscal 1990 ($5,253,000) has been included in a proposed supplemental for pay costs. The sum of $4,150,000 is included for fiscal year 1991, representing the difference between the amount requested in the fiscal year 1990 pay cost supplemental and the full year cost of the pay increase.

(2) All other Judicial employees

All Judiciary employees (except judges and magistrates as noted above) received a 3.6 percent pay increase, effective the first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $23,200,000. (The funding for nine months ($17,400,000) was absorbed in 1990 but the full amount of $23,200,000 is needed in 1991.

b. Annualization Fiscal Year 1990 health benefit costs ($900,000)

The amount requested includes $900,000 for the annualization in health benefits effective in January 1990 (for three months).

c. Cost of Within-Grade and other Salary Advancements including salary increases for clerks, probation and pre-trial services officers ($14,760,000)

All graded personnel in the courts of appeals, district courts, and the United States Claims Court who receive a satisfactory performance rating, pursuant to the salary plan for Judiciary personnel, are entitled to periodic step increases in compensation corresponding with those provided by Chapter 53 of Title 5, United States Code. Also periodically the Judicial Conference approves salary modifications to the existing JSP standards. It is estimated that those salary advancements and salary modifications will cost $9,960,000 during fiscal year 1991. The estimate is based on past experience and takes into account savings due to turnover of personnel and the filling of vacancies at lower rates of pay. This item also includes the estimated cost, based on past experience, of salary increases that will be granted to certain part-time magistrates by the Judicial Conference in recognition of uncontrollable changes in the volume of their respective workloads.

This request also includes $4,800,000 to implement a salary plan for increasing salaries of the clerks of courts and other officials developed as a result of the executive pay plan.

d. Extra Compensable Day in Fiscal Year 1991 ($2,400,000)

The sum of $2,400,000 has been included in recognition of the fact that in fiscal year 1991 there will be 261 compensable days compared with 260 compensable days in 1990.

e. Annualization of 1990 Social Security Costs ($450,000)

The sum of $450,000 is requested for increases in social security taxes due to the increases in the rate and the cap. The amount requested represents three months costs of increases that were effective in January 1990. The wage base will increase $48,000 to $50,700 and the tax rate applied will increase from 7.51 percent to 7.65 percent. The resulting annual impact upon the Judiciary will be an increase of approximately 7.37 percent. The annualization (three months) of this increase, 1.84 percent, is included in the fiscal year 1991 budget request.

f. Federal Retirement System (FERS) $9,000,000

All federal employees hired after December 31, 1983 have been covered under the Federal Employees Retirement System (FERS) rather than the Civil Service Retirement Systems (CSRS) and all subsequent positions requested have been considered as FERS positions for purposes of budgeting the increased retirement contribution inherent in the system. In addition, as positions filled by CSRS employees become vacant they are increasingly filled with employees under FERS. For fiscal year 1991, this turnover based on 1989 experience is estimated to increase the Judiciary's costs by $9,000,000. There costs include: FERS contributions, Basic Thrift Fund contributions, and Matching employees (not Medicare) contributions.

g. Annualization of positions authorized in 1990 ($17,750,000)

In fiscal year 1990 Congress approved partial funding of 1910 positions. The Sum of $17,750,000 is requested to provide nine months funding for these positions.

h. Annualization of positions authorized by drug initiative ($8,873,000)

In fiscal year 1990 Congress approved funding positions for probation to fully implement the drug initiative. While funds for recruitment and background investigation are available, funding for personnel compensation and benefits are still required. Therefore, the sum of $8,873,000 is requested to provide nine months funding for 265 positions.

Item 4. 1991 Pay cost increases

a. Pay cost increases for Judges and Magistrates ($33,000,000)

In accordance with P.L. 101-194 the salaries of judges and magistrates will increase by 25 percent effective January 1, 1991. The sum of $33,000,000 is included for fiscal year 1991 for the cost of nine months of the pay increase.

b. Pay raise (nine month) 3.5 percent for supporting personnel ($17,500,000)

It is expected that federal employees (except judges and magistrates as noted above) will receive a 3.5 percent pay raise effective the first pay period after January 1, 1991, the sum of $17,500,000 in included for fiscal year 1991 for the cost of nine months of the pay increase.

Item 5. Adjustments for Court Operations

a. Furniture and Furnishings Required for New Space ($16,200,000)

The requested amount of $16,200,000 is based on the courts estimates included in their budget call. This is a modest estimate based on expected new space of 1,339,000 square feet coming into use. If we would has based the need for additional furniture as it was calculated last year, the request would have been $22,500,000 (1,339,000 square feet but times $16,78 per square feet).

b. Lawbooks ($1,770,000).

Lawbooks and continuations costs have increased significantly in the past five years according to the annual Price Index for Legal Publications published by the American Association of Law Libraries. The AALL states that the average annual increase in cost has been eight percent. For fiscal year 1991, the sum of $1,770,000 is requested to meet those increased costs as follows:

1. Accessions ($150,000). For the addition of lawbooks to court libraries, an amount of $150,000, an eight percent increase, is requested.

Presently Available	Projected Cost	Increase
$1,878,000	$2,028,000	$150,000

2. Continuations ($1,620,000). To maintain current court libraries with pocket parts, supplements, and revised editions, an increase of 8 percent, or $1,620,000 is needed. This amount is due to the increase in the cost of lawbooks.

Presently Available	Projected Cost	Increase
$20,300,000	$21,920,000	$1,620,000

c. Other Increases in Contract Rates and Charges for Services, Supplies and Equipment ($6,180,000)

(1) Increases in Travel, Subsistence and Mileage Allowances ($800,000)

It is estimated that an additional 4.3 percent will be required in fiscal year 1991 to cover increased charges for travel and subsistence. Also, the allowance for mileage paid for official travel in privately-owned vehicles has been raised from 22.5 cents to 24.0 cents, which amounts to an increase of 6.7 percent.

Presently Available	Projected Cost	Increase
$18,512,000	$19,312,000	$800,000

(2) Increased Cost of Relocation and Transportation of Things ($100,000)

Expenditures for official relocation of court personnel have increased over the years. This is due mainly to increased charges for shipping and storing household goods and effects, real estate commissions and closing costs, and higher allowances for temporary living facilities and house hunting trips. Charges on Government Bills of Lading for the shipment of records and other material have also increased. It is estimated that the sum of $2,629,000 will be required for this purpose in fiscal year 1991, which is $100,000 (4.3 percent) in excess of the amount presently available in the base appropriation.

Presently Available	Projected Cost	Increase
$2,529,000	$2,629,000	$100,000

(3) Telecommunications Services ($1,140,000)

The sum of $26,436,000 is presently available to cover the cost of the Federal Telecommunications System (FTS) Intercity Telephone Service and General Services Administration (GSA) and other commercial telecommunications services. Based on experience over the last several years, it is estimated that FTS and other telecommunications services will increase 4.3 percent in fiscal year 1991. The sum of $1,140,000 is requested to cover these increases (exclusive of requirements relating to new personnel). These increases in amounts, by object classification, are as follows: Local and long distance telephone, $604,000; FTS, $536,000.

Presently Available	Projected Cost	Increase
$26,436,000	$27,576,000	$1,140,000

(4) Rental of Equipment ($160,000)

It is estimated that in fiscal year 1991 the sum of $3,520,000 will be required for the rental of copy machines for clerks' offices, judges' chambers, magistrates' offices, and other component offices of United States courts of appeals, district courts, bankruptcy courts, and Claims Court, exclusive of federal public defenders. This represents an increase of $160,000 (4.3 percent) over the amount presently available in the base appropriation. The 4.3 percent increase is due, primarily, to inflation and also an increased demand for copies of official documents and records by litigants and the public consistent with the projected increase in civil filings. Fees collected from the sale of copies are deposited into the General Fund of the Treasury, and in fiscal year 1988 amounted to a total of $5,997,411 collected in district and bankruptcy courts. In fiscal year 1989, fees collected from these courts increased to $6,781,890, an increase of 13 percent.

Presently Available	Projected Cost	Increase
$3,360,000	$3,520,000	$160,000

(5) Printing and Reproduction ($550,000)

The cost of envelopes, forms, letterheads, dockets and other materials printed by the Government Printing Office and Federal Prison Industries has continued to increase. A 7 percent increase in the cost of printing and binding is estimated because of the growth in labor, paper and commercial procurement costs. At the present time, the sum of $7,800,000 is available for printing and reproduction. Fiscal year 1991 requirements are estimated to be $8,350,000. This increase amounts to $550,000.

Presently Available	Projected Cost	Increase
$7,800,000	$8,350,000	$550,000

(6) Increased Cost of Repairs and Maintenance of Equipment ($655,000)

It is estimated that an additional $655,000 will be required in fiscal year 1991 to allow for 4.3 percent inflationary increases in the cost of labor and parts for the repair and maintenance of office and telephone equipment currently in operation in the courts.

Presently Available	Projected Cost	Increase
$15,225,000	$15,880,000	$655,000

(7) Increased Cost of Contract Interpreters ($300,000)

An additional $300,000 is requested for fiscal year 1991 for the court interpreter program.

A sum of $100,000 is requested to continue certification examinations since the examing teams and test development teams, composed largely of certified interpreters will be paid higher fees.

Additionally, the District Court for the Central District of California will require annual testing of interpreters there since there is an acute shortage of qualified interpreters in that court. The additional cost will be $25,000.

Development of a fifth language certification test and its administration, for Thai, at a cost of $175,000, is also requested.

(8) Increased Cost of Contractual Services ($585,000)

The sum of $585,000 will be required to offset increases in contractual services and rentals. The following projection by type of expenditure is based on recent, as well as anticipated, increases in expenditures at the rate of approximately 4.3 percent.

	Presently Available	Projected Cost	Increase
Part-time magistrate expenses..........	$ 1,124,000	$ 1,170,000	$ 46,000
Computer services...	766,000	799,000	33,000
Health units........	957,000	998,000	41,000
Other rentals.......	551,000	575,000	24,000
Expert services.....	3,389,000	3,535,000	146,000
Other services......	6,853,000	7,148,000	295,000
Total..........	$13,640,000	$14,225,000	$585,000

(9) Supplies and Materials ($400,000)

Based on the growth in expenditures for this purpose, it is anticipated that costs will increase about 4.3 percent in fiscal year 1991 and that the sum of $10,100,000 will be required for supplies and materials, exclusive of requirements relating to new personnel. The sum of $9,700,000 is presently available; therefore, the allotment should be augmented to the extent of $400,000.

Presently Available	Projected Cost	Increase
$9,700,000	$10,100,000	$400,000

(10) Increased Cost of Replacement Equipment and Furniture ($1,490,000)

The cost of general office, ADP, telephone, data communications, and office automation equipment, including furniture, is continuing to increase. In order to offset these rising costs, the allotment for equipment should be augmented to the extent of $1,490,000, or 4.3 percent.

Presently Available	Projected Cost	Increase
$38,815,000	$40,305,000	$1,490,000

d. Nonrecurring Expenses Authorized in Fiscal Year 1990 ($8,160,000)

In fiscal year 1990, the Congress authorized funding and supporting personnel for 18 additional senior judges. The nonrecurring costs of equipment, lawbooks, and furniture for these judicial officers and their staffs total $2,300,000. Funds were also approved for the furniture requirements of newly renovated space in the amount of $6,512,000, of which $5,860,000 is nonrecurring. Therefore, the sum of $8,160,000 has been deducted in establishing the budgetary requirements for fiscal year 1991.

Item 6. Reimbursable Space and Facilities Expenses

General Statement

The Space and Facilities Budget Activity provides space rental payments to the General Services Administration's Federal Buildings Fund; payments primarily to GSA, or in limited circumstances to private vendors, for extra utilities and alterations of space; payments to private lessors for parking and space rental when these services cannot be provided by GSA; and sound systems in courtrooms. The Space and Facilities Committee created by the recent reorganization of the Judicial Conference, oversees and sets policy for the Judiciary's facilities program.

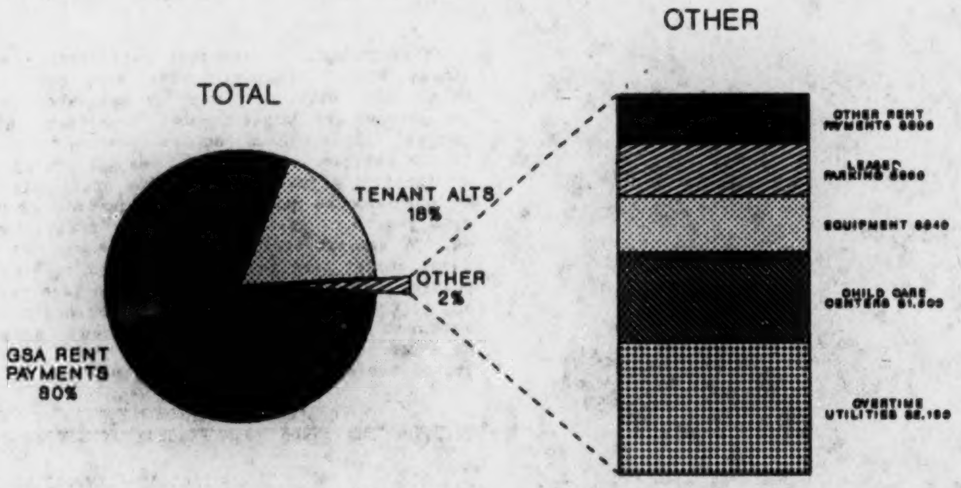
The request for the Judiciary's space and facilities related activities totals in excess of $333 million. Of this amount, over 99 percent, or approximately $331 million will be paid to the General Services Administration for services that agency provides to the courts.

The 1991 request includes an increase of over $28 million required for rental payments to the Federal Buildings Fund, and includes the addition of almost 1.4 million square feet of space. The increasing caseloads of the Federal Judiciary, increases in the number of judges taking senior status who will require facilities, and the need to continuously realign space occupied by the courts for efficient operations, all are factors which contribute to the need to alter Judiciary occupied facilities. Basic alterations are funded by the General Services Administration from the Federal Buildings Fund, a fund to which the Judiciary will contribute in excess of $267 million in 1991.

Alterations which are in excess of GSA guidelines published in 1983 must be reimbursed to GSA. In addition, the Federal Judiciary is required by the GSA to pay the cost of relocating other agencies displaced by court expansion or realignment.

The following chart graphically depicts the primary uses of the facilities related budget request for 1991.

FY91 SPACE & FACILITIES BUDGET REQUEST



(DOLLARS IN THOUSANDS)

Item a. Annualization of Space Assigned in Fiscal Year 1990 ($4,900,000)

In fiscal year 1990 it is anticipated that 600,000 additional square feet will be assigned to the courts of appeals, district courts, and bankruptcy courts. This new space, however, will not be part of the space inventory for the entire fiscal year. The sum of $4,900,000, therefore, is requested in fiscal year 1991, representing the difference between the partial year costs incurred in 1990 and the full year costs to be incurred in fiscal year 1991.

Item b. Increases in Space Rental Costs and Building Related Services and Equipment ($10,600,000)

An increase of $10,600,000 ($9,437,000 for space rental payments to GSA, $33,000 for space rental payments to other lessors than GSA, $280,000 for overtime utilities, $35,000 for non-GSA leased parking, $775,000 for tenant alterations, and $40,000 for space related equipment) will be required in fiscal year 1991. Based on projections communicated by representatives of the GSA, the Judiciary's space rental costs in fiscal year 1991 for space currently occupied and expected to be delivered during 1990 will amount to $256,361,000, an increase of $9,437,000 over the 1990 annualized rental charges for all space to be on inventory as of September 30, 1990 for sequestration (an additional $2,226,000 as requested in item 1 is also required to restore the 1990 base appropriation). This amount represents an anticipated increase of approximately 4 percent.

An estimated inflation rate of 4.3 percent has been applied to all other space and facility related expenses, with the exception of overtime utilities. The estimated increase in that expense category has been adjusted by 4.3 percent for inflation, plus an additional ten percent for increased usage of utilities after normal working hours. The GSA charges agencies for the use of heating and air conditioning after the close of the normal workday, and in many instances the courts are required to request these "overtime" services because court may be in session beyond the end of the workday, or court employees may be working after normal business hours. The additional ten percent increase for these services is related to the new space that is anticipated to be added to the Judiciary's space inventory in 1991.

The following tables summarize the space and facility related requirements for fiscal year 1991 as requested in items 4a and 4b.

I. CALCULATION OF FISCAL YEAR 1991 SPACE RENTAL COSTS

	Square Footage	Average Cost Per Square Foot	Total Estimate ($000)
Fiscal Year 1990 base appropriation:			
-- Space occupied as of 10/1/89	14,469,042	$16.08	$232,685
-- Estimated additional space to be delivered during fiscal year 1990 (partial year cost)	600,000	...	7,051
Subtotal	15,069,042	...	239,736
Fiscal Year 1991 estimate:			
-- Annualization of space assigned in fiscal year 1990 (Item a).	.....	...	4,900
Subtotal	15,069,042	16.23	244,636
-- Increase in space rental charges based on fiscal year 1991 rent estimate provided by GSA (Items 1 sequestration and 4b).	.....	...	11,725
Subtotal, GSA space rental of Item b	15,069,042	17.01	256,361
-- Rental of non-GSA space:			
-- Fiscal year 1990 base			773
-- Estimated 1991 increase Item b.			33
Subtotal, non-GSA space rental			806
-- Rental of leased parking:			
-- Fiscal year 1990 base			825
-- Estimated 1991 increase Item b.			35
Subtotal, rental of leased parking.			860
-- Total fiscal year 1991 space rental costs			$258,027

Summary of Fiscal Year 1991 Space Rental Costs
(exclusive of new space and resources
for improvements in services)

	1990 Available	1991 Estimate	Increase Requested
	(Dollar amounts in thousands)		
A. GSA space rental...	$239,736	$256,361	$+16,625
B. Rental of non-GSA space.............	773	806	+ 33
C. Rental of lease parking..........	825	860	+ 35
	$241,334	$258,027	$+16,693

II. INCREASE IN COST OF BUILDING SERVICES AND EQUIPMENT

	1990 Available	1991 Estimated	Increase Requested*
	(Dollar amounts in thousands)		
Overtime utilities Item b	$ 1,900	$ 2,180	$+ 280
Tenant alterations Item b	18,020	18,795	+ 775
Space related equipment Item b..............	900	940	40
Total...............	$20,820	$21,915	$1,095

C. Rental of Space Delivered in Fiscal Year 1991 ($11,500,000)

It is estimated that a total of approximately 1,339,000 square feet will be added to the Judiciary's space inventory in fiscal year 1991. The estimated cost of this new space is based on an average cost per square foot which is calculated based on building rental estimates for 1991 provided by the General Services Administration. The calculated average is $17.13 per square foot. The amount requested assumes that the space will be occupied by the Judiciary for an average of six months in fiscal year 1991.

The following is a listing of the square footage to be acquired by location:

Circuit	Number of Square Feet
Second:	
Buffalo, NY	4,000
Watertown, NY	4,900
Syracuse, NY	9,000
Third:	
To be determined	2,200
Trenton, NJ	3,700
Philadelphia, PA	10,970
Williamsport, PA	1,600
Pittsburgh, PA	12,957
Christiansted, VI	36,498
Johnstown, PA	9,715
Philadelphia, PA	11,155
Newark, NJ	358,500
Fourth:	
Abingdon, VA	3,840
Charlotte, NC	1,600
Norfolk, VA	9,752
Winston-Salem, NC	3,500
Fifth:	
San Antonio, TX	3,700
Dallas, TX	21,741
Jackson, MS	7,500
Laredo, TX	9,000
Fort Worth, TX	10,100
Amarillo, TX	10,316
Del Rio, TX	16,174

Circuit	Number of Square Feet
Fifth: (continued)	
Monroe, LA	11,000
Beaumont, TX	11,000
Opelousas, LA	1,620
New Orleans, LA	22,000
Austin, TX	50,000
Sixth:	
Nashville, TN	500
Detroit, MI	25,000
Grand Rapids, MI	3,000
Memphis, TN	2,650
Jackson, TN	1,200
Marquette, MI	1,000
Ann Arbor, MI	3,500
Knoxville, TN	7,000
Akron, OH	6,000
Chattanooga, TN	250
Louisville, KY	4,000
Bowling Green, KY	2,000
Seventh:	
Chicago, IL	32,000
Danville, IL	6,900
Eighth:	
St. Louis, MO	2,200
Little Rock, AR	8,941
Ninth:	
Helena, MT	11,000
Spokane, WA	8,500
Fresno, CA	12,000
San Diego, CA	46,500
Los Angeles, CA	267,970
Reno, NV	14,300
Santa Ana, CA	5,000
Ninth: (continued)	
Tucson, AZ	2,000
San Francisco, CA	10,654
Tenth:	
Denver, CO	131,690
Salt Lake City, UT	4,170
Eleventh:	
Macon, GA	2,500
Mobile, AL	4,607
Jacksonville, FL	3,000
Orlando, FL	1,500
Montgomery, AL	1,200
Statesboro, GA	5,356
Ft. Lauderdale, FL	23,075
West Palm Beach, FL	12,898
Ocala, FL	3,830
TOTAL	1,339,929

Item 7a. Regular Magistrate Positions (16), Supporting Personnel (48), and Other Adjustments (1), (65 positions, $8,700,000)

The Federal Magistrates Act of 1968 was designed to create a group of judicial officers who could cull from the ever-growing workload of the United States district courts matters more desirably performed by a lower tier of judicial officers. (S. Rep. No. 371, 90th Cong., 1st Sess., 11 (1967); H.R. Rep. No. 1629, 90th Cong., 2nd Sess., 12 (1968)). The jurisdiction of the magistrates was expanded in 1976 and again in 1979 (Pub. L. Nos. 94-577 and 96-82). The judges of the district courts can now assign a greater variety of duties to magistrates in civil and criminal cases.

The Judicial Conference of the United States, in accordance with the provisions of the Federal Magistrates Act, determines the number, locations, and salaries of full-time and part-time magistrates "as the expeditious administration of justice may require" (28 U.S.C. 633(c)). Positions are created and salaries established by the Conference in light of the recommendations of the Director of the Administrative Office, the district courts concerned, and the judicial councils of the circuits.

New Full-Time Magistrate Positions

Brooklyn, New York (two positions)

Twelve judgeships are authorized for the Eastern District of New York. During the 1988 statistical reporting year, 5,058 cases were filed in the district and 5,127 cases were terminated. The court's pending caseload stood at 6,352 cases on June 30, 1988. The district ranks above the national per judgeship averages in several key categories: felony cases filed (58 v. 51), pending cases (529 v. 466), and trials completed (40 v. 35). The court has a heavy felony caseload, including many complex narcotics and racketeering cases. Future increases in filings of drug-related felonies are expected upon implementation of the 1988 anti-drug legislation.

The "in-court" time spent by judges of the district is among the highest in the nation. Exacerbating the heavy trial workload is the unusually high amount of vacant judgeship months. In 1988 the court reported 15.8 months of judgeship vacancies, and over the last four years the average has been 17.5 months.

The district is served by four full-time magistrates in Brooklyn, one full-time magistrate at Hauppauge, and one part-time magistrate at Patchogue. The ratio of full-time magistrates to judges is below the national average.

The five full-time magistrates perform a wide range of duties and are used effectively by the court. Authorization of two additional full-time magistrate positions would permit the court to keep pace with its civil docket, while increasing the time devoted to felony cases by the district judges.

In light of the increasing number of criminal filings and the high judgeship vacancies in the district, the Judicial Conference has authorized two additional full-time magistrate positions to serve at Brooklyn.

New York City, New York

The Southern District of New York is among the largest metropolitan courts in the country and has 27 authorized judgeships. During the 1989 statistical year, there were 10,604 cases filed in the district and 9,490 cases terminated. The court's pending caseload stood at 13,535 on June 30, 1989. The court's weighted caseload per judgeship was 479, ranking the district 29th among the 94 districts nationwide. This indicates that cases filed in the district tend to be more complex than average.

The district is served by eight full-time magistrate positions at New York City, one full-time magistrate position at White Plains, and one part-time magistrate position at Newburgh. The full-time magistrates are authorized to perform a full-range of duties permitted under the Federal Magistrates Act. The full-time magistrates in New York City are being referred an increasing number of civil cases for general pretrial management. Many of these involve complex, protracted litigation.

Felony cases filed in the district increased by more than 200 filings between 1988 and 1989. Most of the felony cases are fraud and narcotics cases, which often involve multiple defendants and require lengthy trials. As a result, the court desires to refer additional civil matters, particularly civil consent cases, to the magistrates. The district's five judgeship vacancies add to the need for additional judicial assistance.

In light of the complexity of the cases in the district, the increasing felony filings, and numerous judgeship vacancies, the Judicial Conference has authorized one additional full-time magistrate position to serve at New York City.

Buffalo (or Rochester), New York

The Western District of New York is authorized four judgeships, two in Buffalo and two in Rochester. During the 1989 statistical year, there were 1,760 cases filed in the district and 1,779 cases terminated. The court's pending caseload was 2,615 cases on June 30, 1989. The per judgeship pending caseload of the court was 654, ranking the district 12th among the 94 districts.

Two full-time magistrate positions are authorized for the district, one in Buffalo and one in Rochester. Both magistrates are authorized to perform a full-range of duties. They handle civil and criminal matters, as well as civil consent cases.

Narcotics cases filed rose appreciably during statistical year 1989. The growing criminal workload and the substantial civil backlog suggest the need for additional judicial assistance. The Judicial Conference has therefore authorized an additional full-time magistrate position to serve at Buffalo or Rochester. To provide flexibility, the court has been granted discretion to designate the location of the position.

Knoxville (or Chattanooga), Tennessee

The Eastern District of Tennessee currently has four authorized judgeships. During the 1989 statistical reporting year, there were 2,524 cases filed in the district and 2,554 cases terminated. The court's pending caseload stood at 1,989 on June 30, 1989. The per judgeship weighted caseload of the court stood at 594 filings per judgeship in 1989, ranking the district eighth among the 94 districts nationwide. In addition, the court ranked well above the national averages in other areas of statistical comparison, including total trials completed and total cases filed.

The district is served by one full-time magistrate at Knoxville, one full-time magistrate at Greeneville, one full-time magistrate at Chattanooga, and a part-time magistrate at Sevierville (or Gatlinburg). The full-time magistrates are authorized to perform the full range of duties permitted under the Federal Magistrates Act. Due to the court's extremely heavy civil caseload, the magistrates in the district conduct a substantial number of civil trials on consent of the parties as well as handling a broad spectrum of other duties.

In light of the court's substantial and complex caseload, the Judicial Conference has authorized one additional full-time magistrate position at Knoxville (or Chattanooga).

Little Rock, Arkansas

The Eastern District of Arkansas is currently served by four authorized judgeships. During the 1989 statistical reporting year, there were 2,489 cases filed in the district and 2,604 cases terminated. The court's pending caseload stood at 2,245 on June 30, 1989. The per judgeship weighted caseload of the court stood at 532 filings per judgeship in 1989, ranking the district 15th among the 94 districts nationwide. In addition, the court ranked second on the nation in civil cases filed.

The district is served by three full-time magistrates at Little Rock and a part-time magistrate at Jonesboro. The full-time magistrates are authorized to perform the full range of duties permitted under the Federal Magistrates Act. Due to the court's extremely heavy civil caseload, the court would like to assign additional civil case duties to the magistrates. However, the district's heavy prisoner caseload and the substantial responsibilities of the magistrates in the felony area have prevented the realization of this goal.

In light of the court's substantial and complex caseload, the Judicial Conference has authorized one additional full-time magistrate position at Little Rock.

Flagstaff, Arizona

Eight judgeships have been authorized for the District of Arizona. During the 1989 statistical reporting year, there were 3,795 cases filed in the district and 3,428 cases terminated. The court's pending caseload stood at 3,848 on June 30, 1989.

The district is served by four full-time magistrates and five part-time magistrates. The full-time magistrates devote the majority of their time to preliminary felony proceedings and prisoner litigation.

A full-time magistrate at Flagstaff would "ride circuit," assuming the petty offense caseloads at Grand Canyon

National Park, Lake Powell recreation area, and Lake Mead recreation area. The magistrate would be responsible for preliminary felony proceedings in northern Arizona, including those arising on the surrounding Indian Reservations. The magistrate would also be assigned prisoner petitions and social security appeals filed elsewhere in the district.

There currently is no full-time judicial officer in the northern portion of the district, which encompasses one-third of Arizona. In furtherance of the Congressional preference for a system of full-time magistrates, the Judicial Conference has authorized a new full-time magistrate position at Flagstaff in lieu of four part-time positions. The part-time magistrate positions at Grand Canyon National Park, Flagstaff (or Page), Window Rock (or Holbrook), and Kingman will be discontinued upon the appointment of a full-time magistrate at Flagstaff.

Los Angeles, California (two positions)

The Central District of California is a large metropolitan court which is authorized twenty-two judgeships. During the 1988 statistical reporting year, there were 12,838 cases filed in the district and 13,290 cases terminated. The court's pending caseload stood at 11,103 on June 30, 1988. The weighted filings of 553 cases per judgeship rank the court thirteenth among the 94 districts nationwide. The Judicial Conference has recognized the need for additional judicial resources in the district by recommending to Congress the establishment of six new permanent judgeships.

The district is served by eight full-time magistrates at Los Angeles and one full-time magistrate at Santa Ana. Part-time magistrates are located at San Luis Obispo, San Bernardino, Long Beach, Lancaster, Santa Barbara, Oxnard, Barstow, and Palm Springs.

The number of cases filed in the district has risen steadily since 1985. Two recent developments will further burden the court. First, Los Angeles is rapidly becoming the main cocaine traffic center in the nation, resulting in a substantial increase in narcotics prosecutions. Second, a judicially-imposed ban on the execution of 250 death-row inmates in the district has been lifted. Many of these death penalty cases will be reviewed by the district court. Each of the cases will require extensive and time-consuming review.

In light of these factors, the Judicial Conference has authorized two additional full-time magistrate positions at Los Angeles.

Miami, Florida (two positions)

The Southern District of Florida is a large metropolitan court which currently has 15 authorized judgeships. During the 1989 statistical reporting year, there were 5,557 cases filed in the district and 5,669 cases terminated. The court's pending caseload stood at 5,542 on June 30, 1989. The per judgeship weighted caseload of the court stood at 363 filings per judgeship in 1989, ranking the district 73rd among the 94 districts nationwide. There were 83 felony cases filed per judgeship in the district in 1989, ranking the court thirteenth in this category. In addition, the court ranked above the national averages in total trials completed.

The district is served by five full-time magistrates at Miami, one full-time magistrate at Fort Lauderdale, one full-time magistrate at West Palm Beach, one part-time magistrate at Key West, and a part-time magistrate at Fort Pierce. The full-time magistrates are authorized to perform the full range of duties permitted under the Federal Magistrates Act. Due to the large volume of felonies, particularly drug cases, the workload of the magistrates is heavy. Approximately two years ago the court instituted an innovative program under which the chief magistrate of the district assumed primary responsibility for nearly all cases in the district in which the plaintiffs or petitioners are not represented by attorneys. This system has permitted the court to process such cases more efficiently. These cases include a large volume of prisoner litigation. Many of the criminal cases filed in the district are complex conspiracy cases, and a large amount of the court's caseload requires the services of court interpreters, imposing additional demands on court time and resources. The court would like to assign additional civil case duties to the magistrates in Miami.

In light of the court's heavy caseload, and particularly the district's key position in the war on drugs, the Judicial Conference has authorized two additional full-time magistrate positions at Miami.

Conversion of Part-Time Positions to Full-Time Status

Watertown, New York

The Northern District of New York is authorized four judgeships. During the 1989 statistical reporting year, there were 1,688 cases filed in the district and 1,696 cases terminated. The court's pending caseload stood at 3,272 on June 30, 1989. With a pending per judgeship caseload of 818 compared to the national average of 468, the court ranked 5th among 94 districts. The court's per judgeship weighted caseload was at the national average.

The court is served by two full-time magistrates, two part-time magistrates, and a clerk-magistrate. The full-time magistrates devote their time to the district's prisoner litigation and social security appeals. The addition of a third full-time magistrate would provide the court with additional resources to help eliminate the court's case backlog, including the assignment of non-prisoner civil pretrial matters.

In light of these factors, the Judicial Conference has authorized the conversion of the part-time magistrate position at Watertown to full-time status. To provide at least short-term additional assistance with the pending caseload, the Conference also authorized a new part-time magistrate position at Syracuse at the maximum part-time salary level.

Christiansted, St. Croix, Virgin Islands

The District Court of the Virgin Islands has the jurisdiction of a district court and a bankruptcy court of the United States pursuant to 48 U.S.C. 1612. Two judgeships are authorized for the district.

During the 1989 statistical reporting year, there were 1,090 cases filed in the district - 783 civil cases and 307 felony cases. There were 1,130 cases terminated during the year, and the court's pending caseload stood at 1,610 on June 30, 1989. The court ranked 3rd among 94 districts in felony filings per judgeship, with 153 prosecutions per judgeship compared to the national average of 53.

One judgeship has been vacant since October 1988. The Third Circuit has declared a judicial emergency and is using visiting judges to assist with the felony caseload. The court's difficulties have been compounded by the devastation inflicted on the islands in September 1989 by Hurricane Hugo.

The district is served by one full-time magistrate at Charlotte-Amalie on the island of St. Thomas, and one part-time magistrate at Christiansted on the island of St. Croix. The full-time and part-time magistrates are responsible for pretrial management in most criminal cases, as well as some civil cases.

In view of the above factors, as well as an anticipated increase in felony filings, the Judicial Conference has authorized the conversion of the part-time magistrate position at Christiansted to full-time status.

Galveston, Texas

The Southern District of Texas is authorized 13 judgeships. During the 1988 statistical reporting year, there were 7,431 cases filed in the district and 6,922 cases terminated. The court's pending caseload stood at 9,881 on June 30, 1988.

On a per judgeship basis, the court ranked significantly above the national average in most caseload categories. The district's weighted filings of 565 per judgeship (v. 467, nationally) rank the court eleventh among the 94 districts nationwide, and its felony filings of 132 per judgeship (v. 51) rank the court third nationwide. Although the court terminates more cases (532 v. 462) and completes more trials (48 v. 35) than the average district, the pending caseload (760 v. 466) shows that the court is still unable to keep up with its case filings. The district judges in the Galveston and Houston Divisions are devoting an increasing amount of their time to the criminal docket, due to the influx of complex multi-defendant drug conspiracy prosecutions.

The district is served by four full-time magistrates at Houston, and one full-time magistrate each at Brownsville, Corpus Christi, Laredo, and McAllen. Part-time magistrates are located at Galveston and McAllen.

The full-time magistrates at Houston and the part-time magistrate at Galveston perform the full range of duties authorized under the Federal Magistrates Act. The magistrate at Galveston is used for civil and criminal pretrial management, and tries civil cases with the consent of the parties. A full-time magistrate would be used in similar fashion. The court intends to place increased emphasis on magistrate use in case settlement, in an effort to reduce the Galveston pending caseload. To the extent that a full-time magistrate at Galveston would have time available, the magistrate would also assist with the Houston caseload.

In light of these factors, the Judicial Conference has authorized the conversion of the part-time magistrate position at Galveston to full-time status. Inasmuch as Galveston is located only 50 miles from Houston, the position has been designated to serve at "Galveston or Houston", to provide the court flexibility to shift its magistrate resources where most needed.

Memphis or Jackson, Tennessee

The Western District of Tennessee currently has four authorized judgeships. During the 1989 statistical reporting year, there were 1,770 cases filed in the district and 1,615 terminated. The court's pending caseload stood at 2,029 on June 30, 1989. The per judgeship weighted caseload of the court stood at 417 filings per judgeship in 1989, ranking the district 54th among the 94 districts nationwide. In addition, the court's standing among all 94 districts in felony cases filed per judgeship rose to tenth, and the court stood at eleventh in total trials.

The district is served by two full-time magistrates at Memphis and a part-time magistrate at Jackson. The full-time magistrates are authorized to perform the full range of duties permitted under the Federal Magistrates Act. There has been an especially sharp increase in felony drug cases in the district during the last two years. Due to the sharp rise in felony filings in the district, the workload of the magistrates at Memphis is heavy, and their availability to perform additional duties in civil cases has declined. The court would like to assign additional civil case duties to the magistrates, and to alleviate the heavy burden caused by the sharp increase in felony matters.

In light of the court's sharply increased criminal caseload, the Judicial Conference has authorized the conversion of the part-time magistrate position at Jackson to a full-time position, to serve the court at Memphis or Jackson.

Mobile, Alabama

The Southern District of Alabama has three authorized judgeships. During the 1988 statistical reporting year there were 1,556 cases filed in the district and 1405 cases terminated. The court's pending caseload stood at 1,429 on June 30, 1988. The court exceeded the national average in total cases filed (519 v. 467) and total cases pending (476 v. 466). The district has a substantial number of civil cases filed per judgeship, placing it well above the national average (459 v. 417), and more felony cases filed per judgeship than the national average (60 v. 51).

The district is currently served by two full-time magistrates and has one authorized part-time magistrate position ($41,170 per annum). The court has had extended judgeship vacancies that required it to function with only two judges for 30 of the 51 months after the third judgeship was authorized in 1984. The former chief judge recently took senior status, creating another vacancy.

The court has utilized its magistrates to the fullest extent authorized by law. The incumbent magistrates appear to be working as fully and effectively as possible, and handle a wide range of duties. The court has a heavy volume of prisoner and social security cases, all of which are referred to the magistrates. In addition to conducting proceedings in Mobile, the magistrates travel the 160 miles to Selma as needed to handle misdemeanor cases, oral arguments in social security cases, pretrial conferences, and prisoner evidentiary hearings. The additional magistrate will be used to assist with the backlog of prisoner and social security cases, as well as in other capacities. The addition of the third magistrate will permit the magistrates to handle a greater number of case-dispositive motions and civil consent cases, and will allow the judges to use the magistrates more extensively to handle various civil case matters on an ad hoc basis.

In light of the district's heavier than average caseload per judgeship, and in view of the substantial periods it has had to cope with judgeship vacancies, the Judicial Conference has authorized the conversion of the part-time magistrate position at Mobile to full-time status.

Item 7.b Accelerated Magistrate Positions (6) and supporting personnel (18), (6 months) (24 positions, $2,370,000)

The Judiciary requests 50 percent funding for six new full-time magistrate positions (and related staff positions and expenses) to be authorized by the Judicial Conference in September of 1990.

By 1991 the number of drug case filings is expected to increase by a minimum of 20 percent over the 1988 level. There is a strong possibility that such cases will increase by as much as 50 percent by 1991 due to the 1988 anti-drug legislation and additional prosecution resources devoted to the war on drugs. Should this 50 percent increase materialize, the district courts will face a drug caseload of nearly 16,000 cases filed in 1991 with almost 30,000 defendants, compared to 10,600 drug cases and 20,000 defendants in 1988. See Report of the Judicial Conference of the United States to the Congress - Impact of Drug Related Criminal Activity on the Federal Judiciary, March 1989.

Magistrates will be the first judicial officers to feel the impact of increased drug prosecutions. They may also afford the most immediate judicial relief for the drug emergency in the federal courts. Virtually all magistrates are involved in the initial processing of criminal cases. The process begins with issuance of search and arrest warrants and extends to the conduct of initial appearances, detention hearings, pretrial motions and conferences, and misdemeanor trials. As law enforcement and prosecutorial efforts move more cases into the federal courts, existing magistrate resources will be devoted more and more to criminal duties. This in turn will result in a decrease in the support that magistrates can give to judges in civil cases. By the time the flood of drug cases subsides, the backlog of civil cases in federal court may be insurmountable.

The Judicial Conference has therefore determined that accelerated funding for a reasonable number of new full-time magistrate positions is imperative. Under current budget procedures, magistrate positions authorized by the Judicial Conference in September of 1990 will be included in the fiscal year 1992 budget and will not be funded until October 1, 1991, at the earliest. Under the accelerated funding method requested herein, these new magistrates can begin work midway through fiscal year 1991, i.e., on or near April 1, 1991.

The six positions sought represent approximately one half of a normal year's increase in magistrate positions. Only 50 percent funding for the positions is being requested because it will take approximately six months to complete the selection and appointment process after the Judicial Conference authorizes the positions in September of 1990. When the locations of the positions are determined at the June 1990 Magistrates Committee meeting, Congress will be notified as to the locations, as well as to the justifications for the positions. If fewer than six positions are approved by the Committee, funding for the extra positions will not be sought.

Other Adjustments

The Judicial Conference authorized establishment of one new part-time magistrate position and 17 new law clerk positions (16 for new full-time magistrate positions and one for an existing magistrate position which does not have a law clerk), discontinued five part-time magistrate positions, and decreased the salary of one part-time magistrate position.

New Part-Time Magistrate Position

Syracuse (or Utica), New York at $41,170

Law Clerks for Magistrate Positions

The Federal Magistrates Act of 1979 authorized the Judicial Conference to provide law clerk positions to full-time magistrates. In creating the position of law clerk, Congress recognized the growing range and volume of judicial duties assigned to magistrates under authority of 28 U.S.C. 636(b), particularly in the area of pretrial motions, prisoner litigation, and social security cases (S. Rep. No. 96-74), 96th Con., 1st Session, 18 (1979). Moreover, the Act authorized magistrates to try civil cases, including jury trials, upon the consent of the parties. These expanded judicial responsibilities necessarily require a substantial amount of legal research and opinion writing by magistrates. Accordingly,law clerk positions were authorized to assist magistrates with these tasks.

The Judicial Conference criteria for authorizing law clerk positions for magistrates require: a) that the number of law clerk positions authorized in any district not exceed a ratio of one clerk per full-time magistrate position; b) that the magistrate perform an appreciable volume of judicial duties under authority of 28 U.S.C. 636(b) or (c); and c) that the request be approved by the district court and the judicial council of the pertinent circuit.

In fiscal years 1982 through 1990, Congress authorized funds for a total of 299 law clerk positions for selected full-time United States magistrates. Generally, the Judicial Conference does not authorize more than one permanent law clerk for any full-time magistrate, nor does the Conference authorize law clerks for magistrates whose caseloads are limited to criminal duties.

For fiscal year 1991, full funding for 17 law clerk positions is requested for full-time magistrate positions. Of these, 16 are for new full-time magistrate positions and one is for an existing magistrate position which does not have a law clerk. In addition, 50 percent funding for six law clerk positions is sought under the accelerated funding method.

Discontinuance of Part-Time Magistrate Positions

Sevierville (or Gatlinburg),Tennessee at $10,293.
Grand Canyon National Park, Arizona at $28,819.
Flagstaff (or Page), Arizona at $10,293.
Window Rock (or Holbrook), Arizona at $5,442.
Kingman, Arizona at $3,265.

Salary Decrease for Part-Time Magistrate Position ($2,090)

Green Bay, Wisconsin from $4,354 to $2,264.

Summary of Requirements

Personnel Compensation

New full-time magistrate positions

Two new full-time magistrate positions to be established at Brooklyn, New York at $82,340 per annum............	$164,680
One new full-time magistrate position to be established at New York, New York at $82,340 per annum............	82,340
One new full-time magistrate position to be established at Buffalo (or Rochester), New York at $82,340 per annum................................	82,340
One new full-time magistrate position to be established at Knoxville (or Chattanooga), Tennessee at $82,340 per annum................................	82,340
One new full-time magistrate position to be established at Little Rock, Arkansas at $82,340 per annum.........	82,340
One new full-time magistrate position to be established at Flagstaff, Arizona at $82,340 per annum.................	82,340
Two new full-time magistrate positions to be established at Los Angeles, California at $82,340 per annum.......	164,680
Two new full-time magistrate positions be established at Miami, Florida at $82,340 per annum....................	164,680

Conversion of five part-time positions to full-time status	
Conversion of part-time position at Watertown, New York into a full-time magistrate position at $82,340 per annum	$ 41,170
Conversion of part-time position at Christiansted, Virgin Islands into a full-time magistrate position at $82,340 per annum	41,170
Conversion of part-time position at Galveston (or Houston), Texas into a full-time magistrate position at $82,340 per annum	41,170
Conversion of part-time position at Jackson (or Memphis), Tennessee into a full-time magistrate position at $82,340 per annum	60,690
Conversion of part-time position at Mobile, Alabama into a full-time magistrate position at $82,340 per annum	41,170
Supporting personnel for 16 full-time magistrates	
16 law clerks at JSP-12	573,200
16 secretaries at JSP-11	478,256
16 clerical assistants at JSP-9	395,280
Other adjustments	
One new part-time magistrate position	41,170
One law clerk for existing magistrate position	35,825
Discontinuance of five part-time magistrate positions	-58,112
Salary decrease for one part-time magistrate position	- 2,090
Subtotal, personnel compensation	2,594,639
Deduct lapse (3 percent)	77,839
Total, personnel compensation	2,516,800
Personnel benefits	533,200
Operating expenses	2,250,000
Space	3,400,000
Total	$8,700,000

Accelerated six full-time magistrates and supporting personnel (18) (six months funding)

Magistrate (6) salaries and benefits	315,000
Personnel(18) (salaries & benefits)	650,000
Operating expenses	405,000
Space	1,000,000
Total	2,370,000

United States magistrates perform all of the duties formerly handled by the United States commissioners, to include the trial and disposition of criminal misdemeanor offenses. The following table shows the breakdown of misdemeanors (not more than one year imprisonment) and petty offenses (fine not more than $5,000 or six months imprisonment):

Criminal Trial Jurisdiction Cases
(For the Years Ending June 30, 1984 - 1989)

	1984	1985	1986	1987	1988	1989
Petty offenses............	73,199	76,978	79,971	83,092	76,578	75,377
Misdemeanors other than petty offenses..........	11,276	13,779	12,298	12,896	13,418	13,674
Total misdemeanors........	84,475	90,757	92,269	95,988	89,996	89,051

Under authority of 28 U.S.C. 636(a), magistrates issue search warrants, arrest warrants, conduct initial appearances, detention hearings (weren't separately reported until 1985), and bail reviews, and conduct preliminary examinations (probable cause hearings) and post indictment arraignments. The volume of these less-time consuming duties increased by 8.2 percent last year, as shown in the following table:

Preliminary Criminal Proceedings
(For the Years Ending June 30, 1984 - 1989)

	1984	1985	1986	1987	1988	1989
Search warrants...........	7,372	9,776	11,202	11,744	14,246	18,123
Arrest warrants/summonses.	12,401	13,178	14,384	14,983	16,408	18,307
Initial appearances.......	40,209	44,379	45,385	45,571	47,956	46,609
Detention hearings........	-	4,167	9,444	9,708	11,935	15,270
Bail reviews..............	8,579	8,051	6,876	7,140	6,665	7,076
Preliminary examinations..	4,854	4,922	5,588	6,104	6,805	7,034
Arraignments..............	23,646	24,826	27,734	28,827	29,569	31,204
Other.....................	12,276	10,844	10,457	10,014	9,768	11,425
Total.....................	109,337	120,143	131,070	134,091	143,352	155,048

A magistrate who has been specifically designated by the district court to exercise civil trial jurisdiction under 28 U.S.C. 636(c) may, upon the consent of the litigants, conduct any and all proceedings in a civil case, including trial of the case. During the year ending June 30, 1989, the volume of such cases completed by magistrates decreased by 9.3 percent over 1988, as shown in the following table:

Civil Consent Cases
(For the Years Ending June 30, 1984 - 1989)

	1984	1985	1986	1987	1988	1989
Without trial............	2,697	2,924	3,976	4,008	4,914	4,349
Jury trial...............	305	308	372	459	550	422
Non-jury trial...........	544	485	612	503	439	583
Total....................	3,546	3,717	4,960	4,970	5,903	5,354

7. c. Recalled Bankruptcy Judges and Supporting Personnel ($2,060,000)

Due to increases in the bankruptcy workload and changes in bankruptcy retirement system, five additional judges will be recalled to assist the regular judges in handling the court docket in 1991. The funds requested, $2,060,000, are required to fund the recalled judges and to provide 10 supporting personnel for them. The funds are requested for 9 months as follows: $385,000 for Judges salaries and benefits; $275,000 for supporting personnel; $745,000 for operating costs; and $655,000 for rent and tenant alterations. This request will increase the number of recalled bankruptcy judge staff years to 22 from the 17 currently in the base appropriation.

Item 8. Additional Personnel for the Circuit Executives (1) and Staffs Attorneys (37) (38 positions, $535,000)

Administrative Staff (1 position)

The Judicial Conference has approved an additional administrative assistant to the circuit executive in the Seventh Circuit, to perform various administrative support functions, including space and facilities planning/coordinating, budget collection and report preparation, computerization consultation, and conduct of statistical studies.

Central Legal Staff (1 position)

The Sixth Circuit requests an additional secretarial position to support the staff attorneys at the Judicial Conference approved ratio of one support position to every two attorney positions.

Pre-argument Counselor and Clerical Support (3 positions)

The First and D.C. Circuits each seek to establish pre-argument programs to promote the voluntary settlement or withdrawal of appeals without court action. The First Circuit's program would require attorneys in all civil appeals to meet with a pre-argument counselor to explore settlement and address other issues such as resolving, without the necessity of formal motions, procedural problems that may arise in civil appeals. The D.C. Circuit currently relies on volunteers to serve as mediators and other third party neutrals. A staff pre-argument counselor is needed to train, guide, and evaluate volunteer counselors on an on-going basis. Such programs are currently in place in the Second, Sixth, and Eighth Circuits, and approved by the Judicial Conference for the Tenth Circuit pending funding. This request for the pre-argument counselor was approved at the Judicial Conference meeting September 9, 1989.

Each circuit requests one pre-argument counselor, grade JSP-15, which is in line with similar positions in the referenced circuits. The First Circuit also seeks a supporting secretarial position at grade JSP-7. The following positions are funded for three months.

1991 Requirements	Number	Grade	Total
Administrative Assistant (7th circuit)	1	14	$ 19,500
Central Legal Staff (6th circuit)	1	7	11,250
Pre-argument Attorneys - First & D.C. Circuits	2	15	48,000
Secretarial Support - Pre-argument Staff (First)	1	7	11,250
Subtotal	5		
GRAND TOTAL			$90,000

Additional Central Legal Staff

As the appropriation committees have agreed to a new cap on central legal staff which reflects the limitations some circuits are placing on new judgeships, funding is requested for attorney and secretarial support at the rate of one attorney for every three judgeships warranted by workload but not authorized.

Therefore, the sum of $445,000 is requested for three months for 22 staff attorneys and 11 staff. ($280,000 salaries and benefits and $165,000 for operating expenses).

CIRCUIT EXECUTIVE STAFF   Fiscal Year 1991

	FISCAL YEAR 1990					INCREASE	FISCAL YEAR 1991				
Circuit	Circuit Exec	Admin Asst	Secretary	Other	Total	Admin Asst	Circuit Exec	Admin Asst	Secretary	Other	Total
D.C.	1	1	2	1*	5		1	1	2	1*	5
First	1	2	2	1*	6		1	2	2	1*	6
Second	1	2	2	1*	6		1	2	2	1*	6
Third	1	2	3	1*	7		1	2	3	1*	7
Fourth	1	2	2	1*	6		1	2	2	1*	6
Fifth	1	4	3	1*	9		1	4	3	1*	9
Sixth	1	2	2	1*	6		1	2	2	1*	6
Seventh	1	1	1	1*	4	1	1	2	1	1*	5
Eighth	1	2	3	1*	7		1	2	3	1*	7
Ninth	1	7	5	1*	14		1	7	5	1*	14
Tenth	1	2	2	1*	6		1	2	2	1*	6
Eleventh	1	2	2	1*	6		1	2	2	1*	6
Undistributed	0	0	0	7**	7		0	0	0	7**	7
Total	12	29	29	19	89	1	12	30	29	19	90

* Telecommunications Coordinators

**Data Network Managers

CENTRAL LEGAL STAFF

Circuit	Authorized Judgeship	Present Staff: Staff Atty	Present Staff: Secretary	Present Staff: Total	Increase: Staff Atty	Increase: Secretary	Increase: Total	Fiscal Year 1991: Staff Atty	Fiscal Year 1991: Secretary	Fiscal Year 1991: Total
D.C.	12	9	4	13	1		1	10	4	14
First	6	6	3	9	1	1	2	7	4	11
Second	13	15	9	24			0	15	9	24
Third	12	12	6	18			0	12	6	18
Fourth	11	11	6	17			0	11	6	17
Fifth	16	16	8	24			0	16	8	24
Sixth	15	18	8	26	1		1	19	8	27
Seventh	11	11	6	17			0	11	6	17
Eighth	10	12	6	18			0	12	6	18
Ninth	28	30	16	46			0	30	16	46
Tenth	10	12	8	20			0	12	8	20
Eleventh	12	12	4	16			0	12	4	16
Undistributed		0	0	0	22	11	33	22	11	33
TOTAL	156	164	84	248	25	12	37	189	96	285

NOTE: The Second, Sixth, Eighth and Tenth Circuits include staff for the preargument conference program co-equal to the central legal staffs.

Item 9. Clerks Office Personnel (838 positions, $10,985,000)

For fiscal year 1991, additional 838 positions are requested above the level authorized in fiscal year 1990 to meet the needs of the courts of appeals, district courts, and bankruptcy courts, and to meet the automation staffing needs of all the federal courts. The additional costs by type of position are shown below:

	Authorized FY 1990	Required FY 1991	Additional Positions Required	
A. Work Measurement				
Courts of Appeals	593	627**	34	$ 388,000
District Courts	4,194	4,225	31	354,000
Bankruptcy Courts	4,360	4,847	487	5,558,000
Subtotal	9,147*	9,699	552	6,300,000
B. Automation Support.	...	240	240	3,260,000
C. Criminal Fine Center.	...	40	40	900,000
D. Court Interpreter	51	57	6	150,000
E. Court Annexed Arbitration	...	...	...	375,000
Grand Total	9,198	10,036	838	$10,985,000

*Excludes 196 clerks of court, 120 bankruptcy estate administrators, and 252 electronic court recorder operators.

**Includes 12 deputy clerk positions for automation and eight deputy clerks for bankruptcy appellate panel in the Ninth circuit.

a. Deputy Clerks for Courts of Appeals, District Courts and Bankruptcy Courts (552 positions, $6,300,000)

Courts of Appeals (34 positions, $388,000)

For fiscal year 1991, a total of 627 deputy clerk positions are required for the courts of appeals. This request includes 607 positions based on the 75:1 staffing formula, 12 positions for automation, and 8 positions for the bankruptcy appellate panel in the Ninth Circuit.

The ratio of 75 appellate filings per deputy clerk was approved by the Judicial Conference and has been applied since 1973 as the appropriate level of staffing for the courts of appeals clerks' offices.

The most recent data available show appellate filings of 38,965 for the year ended December 31, 1988. This is an increase over the 35,510 filings in fiscal year 1987 and 38,345 in fiscal year 1988.

Appellate filings are now growing at a faster rate than they did several years ago, when they only grew by about three percent per year. Criminal appeals, particularly, are increasing very rapidly, primarily because of the sentencing guidelines. Based on the recent trend and the likely continuation of large numbers of sentencing appeals, total appeals are expected to increase to 43,500 in fiscal year 1990, and 45,500 in fiscal year 1991.

In addition to the positions justified based on the 75:1 staffing formula, the Judicial Conference has recently approved a report on Staffing for Decentralized Automation in the Federal Courts, detailing the staffing needs in the courts due to the implementation of UNIX-based automation in the courts. The report recommends that courts be provided with additional positions for three years to implement the automated case management systems being provided to the courts, after which time the positions will be eliminated. Based on this study an additional 19 positions are required for fiscal year 1989, 18 for fiscal year 1990, and 12 for fiscal year 1991. The 12 positions required in 1991 are included in our request for additional positions for the courts of appeals.

A chart containing historical and projected filing data follows:

Fiscal Year	Appeals	Percentage Growth	75 to 1 ratio Positions Required
1984	32,342	-	431
1985	33,506	4	447
1986	34,605	3	461
1987	35,511	3	473
1988	38,345	8	511
1989	39,927	4	532
Estimated			
1990	43,500	5	580
1991	45,500	5	606*

*Excluded from this total are 12 deputy clerk positions for automation and eight deputy clerk positions for the bankruptcy appellate panel in the Ninth Circuit.

Deputy Clerks for District Courts (31 positions, $354,000)

For fiscal year 1991, a total of 4,225 deputy clerk an increase of 31 over 1990 positions are requested for the district courts.

A chart containing historical and projected filing data for district courts follows:

Fiscal Year	Civil Filings	Criminal Filings	Total	Percent Increase
1984	259,956	37,829	297,785	-
1985	278,681	39,720	318,401	6.9
1986	246,733	42,343	289,076	(9.2)
1987	234,467	44,246	278,713	(3.6)
1988	240,950	43,607	284,557	2.1
1989	225,685	45,735	271,420	(4.7)
Estimated				
1990	246,000	51,000	297,000	9.4
1991	260,000	55,800	315,800	6.3

The chart below breaks out the two components of the civil caseload that have accounted for much of the fluctuation in overall civil caseload during the past few years: recovery of overpayment cases and social security cases. In making projections for civil filings, these two categories of cases were considered separately.

Fiscal Year	Recovery of Overpayments	Social Security	All Other	Total Civil Filings
1984	46,515	27,293	186,148	259,956
1985	59,609	20,104	198,968	278,681
1986	32,670	11,639	202,424	246,733
1987	21,584	14,348	198,535	234,467
1988	18,488	13,762	208,700	240,950
1989	14,608	9,326	201,751	225,685
Estimated				
1990	20,000	10,000	216,000	246,000
1991	26,000	10,000	224,000	260,000

The bulk of the recovery of overpayment cases are suits filed by the Department of Veterans Affairs. These cases have been declining at rapid rates the past three years. Pursuant to discussions with their Debt Collection Office, these cases are expected to level off during fiscal year 1990 and to remain fairly constant through fiscal year 1991.

Most of the remainder of the recovery of overpayment cases are student loan cases. These are now increasing very rapidly after years of steady filing levels. Based on discussions with the Department of Education, the numbers of these cases filed in the district courts is expected to continue to increase rapidly through fiscal year 1991. The Department continues to use private attorneys in addition to U.S. Attorneys to file these cases and will soon be given a new portfolio of guaranteed student loans from the states to collect. This is three times as large as their current portfolio of cases and will result in many more cases being filed in the federal courts.

Based on current trends and the information discussed above, recovery of overpayment filings are expected to increase to 20,000 in fiscal year 1990, and 26,000 in fiscal year 1991.

Social Security filings continue to fall. There were 9,326 cases filed in 1989, compared with 14,348 in fiscal year 1987 and 13,762 in fiscal year 1988. Discussions with the Social Security Administration reveal that no changes in operating procedures are expected to be made and that there is no backlog of cases to be filed. Thus, social security filings are expected to continue to fall through fiscal year 1989 to 10,000 cases, and to remain at that level through fiscal year 1991.

"All other" civil filings declined in 1989 to 201,751 from 208,700 in 1988, a decrease of about three percent.

The first factor is the provision in the Judicial Improvements and Access to Justice Act, signed into law on November 19, 1988, which raised the minimum amount in controversy for diversity jurisdiction in the federal courts from $10,000 to $50,000, effective May 18, 1989. A study conducted by the Federal Judicial Center estimates that diversity jurisdiction will no longer apply in 16 percent of the cases which are now eligible for it.

The second factor is the Anti-Drug Abuse Act of 1988 which allocated funds to the Department of Justice for asset forfeiture litigation. The Department estimates that this will roughly triple the number of assistant U.S. Attorney positions devoted to forfeitures by the end of fiscal year 1990. Since there were 2,927 U.S. plaintiff "other" forfeiture and penalty cases in 1988, mostly involving drugs, it is estimated that drug related forfeitures will increase by 4,000 cases in fiscal years 1990 and 1991.

In summary, based on the long-term trend and the factors shown above, "all other" civil filings are projected as follows:

FY1990: 224,000 -12,000 diversity + 4,000 forfeiture
  = 216,000
FY1991: 233,000 -13,000 diversity + 4,000 forfeiture
  = 224,000

From 1984 to 1987 criminal filing increased about 2,000 cases per year. In 1988 there was just a modest increase over 1987. However, in 1989 criminal cases increased about 2,000 cases over 1988. Because of violent crime and drug initiatives 1990 is expected to increase by 5,265 cases and by 4,800 cases in 1991.

A work measurement formula, approved by the Judicial Conference at its March 1982 meeting, has been employed to compute personnel requirements since fiscal year 1983. The staffing formula is based on the "average" mix of case filings which existed in 1981 when the formula was developed. During the intervening years, the number of recovery of overpayment cases has risen rapidly. Even though the numbers of these cases have declined recently, they are still being filed at rates much higher than in 1981. Since recovery of overpayment cases are known to require less effort in clerks' offices than other cases (because processing these types of cases lends itself to automation and economies of scale), strict adherence to the formula would result in an overstaffing of clerks' offices. To compensate for this, these cases have been weighted at 40 percent of other cases. A similar adjustment was made for certain misdemeanor cases, which also demand less effort in clerks' offices. The weighing for these cases is 20 percent. The combination of these two adjustments to the basic formula reduces the number of positions required in fiscal year 1991 by 162 positions.

It must be emphasized that the present work measurement formula does not provide adequate staffing credit to clerks' offices in several areas because of changing circumstances. For example, due to the sentencing guidelines and other legislation, judges are spending more time on criminal cases with resultant increased paperwork and other activity in clerks' offices. This work is beyond that measured in the current staffing formula. Since the clerk's office is responsible for keeping cases moving toward settlement or other disposition, shortages in any area of clerk's office staffing will affect disposition rates for all cases in the district courts. The present staffing formula should be considered as providing minimum estimates of clerk's office staffing needs as many new functions mandated by legislation subsequent to the formula development have added significant new workload on district court clerks' offices.

The Judicial Conference has recently approved a report on Staffing for Decentralized Automation in the Federal Courts, detailing the staffing needs in the courts due to the implementation of UNIX-based automation in the courts. The report recommends that courts be provided with additional positions for three years to implement the automated case management systems being provided to the courts, after which time the positions will be eliminated. Based on this study, 95 additives are included for fiscal year 1989, 109 for fiscal year 1990, and 135 for fiscal year 1991.

The following chart provides a listing of the manpower needs in the district courts listed according to the categories established in the work measurement formula.

	FY 1988 Actual		FY 1989 Estimated		FY 1990 Estimated		FY 1991 Estimated	
Workload Factor	Workload Volume	Workyear Credit	Workload Volume	Workyear Credit	Workload Volume	Workyear Credit	Workload Volume	Workyear Credit
Filings:								
Civil..................	240,821	1,669	240,000	1,663	246,000	1,705	260,000	1,802
Criminal...............	44,699	310	46,000	321	49,000	340	51,000	354
Subtotal...............	285,520	1,979	286,000	1,984	295,000	2,045	311,000	2,156
Adjustment*............	-18,020	-124	-18,600	-129	-19,500	-135	-23,400	-162
Adjusted Subtotal.....	267,500	1,855	267,400	1,855	275,500	1,910	287,600	1,994
Other Factors:								
Judges..................	575	924	575	924	575	924	575	924
Juror Days.............	755,000	91	785,000	91	800,000	96	825,000	99
Appeals................	32,500	124	35,700	135	37,400	143	39,100	149
Attorneys Admitted......	50,000	33	50,000	33	50,000	33	50,000	33
Divisional Offices......	170	34	171	34	171	34	171	34
Constant Factors........	...	130	...	132	...	132	...	132
Subtotal.............		1,336		1,349		1,362		1,371
Additives**..............	...	825	...	856	...	895	...	954
Less: Clerks of Court....		-94		-94		-94		-94
Total Deputy Clerks Justified by Work Measurement Formula................		3,922		3,966		4[illegible]		4,225

*These downward adjustments result from the weighing of civil recovery of overpay[illegible] and enforcement of judgment cases and criminal misdemeanor cases, as explained above.

**"Additives" consist of the workload factors that vary from court to court such as the processing of central violations bureau tickets, naturalization petitions, prisoner petitions and refilling jury wheels. They also include court reporter coordinator positions, pro se law clerks program positions, automation positions, and magistrates' clerical positions.

Note: The drug and violent crime initiative is expected to drive criminal cases up from 51,000 cases in 1990 to 55,800 in 1991. This would result in an additional 33 positions.

Deputy Clerks for Bankruptcy Courts (487 positions, $5,558,000)

For fiscal year 1991, a total of 4,847 (an increase of 487 positions over 1990 authorized level) deputy clerk positions are needed for the bankruptcy courts.

Three forecasting models are used to project bankruptcy filings. These models include factors such as private borrowing, the percentage of consumer debt delinquent at least 30 days, the percent change in the index of leading economic indicators, and the personal savings rate. All three models provide consistent forecasts for fiscal year 1991. Based on these models, bankruptcy petitions filed are projected to increase to 775,000 in fiscal year 1990, and 850,000 in fiscal year 1991 an 18.0 and 10 percent increases respectively.

Until recently, adversary filings were closely correlated with total bankruptcy petitions filed. However, adversary filings have been declining since 1985 despite higher filing levels. However, adversary filings are expected to increase slightly to 55,000 in fiscal years 1990 and 1991.

The following chart summarizes historical and projected filings for the different chapters and for adversary proceedings.

Fiscal Year	Filings				
	Chap. 7	Chap. 11 & 12	Chap. 13	Total	Adversaries
1984	235,190	19,960	91,338	346,488	58,804
1985	257,928	22,602	102,967	383,497	63,226
1986	356,948	24,490	126,106	507,544	64,853
1987	402,558	27,152	138,678	568,388	57,879
1988	430,868	20,833	152,695	604,396	56,648
1989	464,375	19,231	173,318	656,980	53,165
Estimated					
1990	547,000	22,000	206,000	775,000	55,000
1991	598,000	23,000	229,000	850,000	55,000

At its March 1985 session, the Judicial Conference approved a revised work measurement staffing formula for bankruptcy clerks' offices. The prime determinants of staffing needs are the numbers of chapter 7, 11, 12, and 13 filings. However, the formula incorporates other factors which also influence the need for staff in bankruptcy clerks' offices.

In addition to the positions justified based on the work measurement staffing formula, the Judicial Conference has recently approved a report on Staffing for Decentralized Automation in the Federal Courts, detailing the staffing needs in the courts due to the implementation of UNIX-based automation in the courts. The report recommends that courts be provided with additional positions for three years to implement the automated case management systems being provided to the courts, after which time the positions will be eliminated. Based on this study an additional 79 additive positions are included for fiscal year 1989, 103 for fiscal year 1990, and 125 for fiscal year 1991.

The calculations in the work measurement formula are based on all notices being performed manually by clerk's office personnel. In almost all clerks' offices, however, the noticing function is performed at least in part by non-clerk's office personnel, either through the Bankruptcy Automated Noticing System (BANS), or by transferring part of the noticing work to others, particularly debtors in possession and private contractors. Data was collected recently to determine how many notices were prepared outside the clerk's office and the impact of the elimination of this work on clerk's office staff. Based on this data, the subtractive for notices is estimated to be 87 positions in fiscal year 1989, 96 positions in fiscal year 1990 and 105 positions in fiscal year 1991.

It must be emphasized that the present work measurement formula does not provide adequate staffing credit to clerks' offices in several areas because of changing circumstances. For example, until recently, most judges did not have courtroom deputies assigned to them full time to provide case management services to the judges. Now most judges are requiring such support from positions authorized to clerks' offices, but these increased case management duties are beyond that measured in the current staffing formula. Since the clerk's office is responsible for keeping cases moving toward disposition, shortages in any area of clerk's office staffing will affect disposition rates for all cases in the district courts. The present staffing formula should be considered as providing minimum estimates of clerk's office staffing needs as many new functions subsequent to the formula development have added significant new workload on bankruptcy court clerks' offices.

The following chart provides a listing of the manpower needs in bankruptcy clerks' offices according to the categories established in the work measurement formula taking into account position savings from the automation and delegation of noticing functions.

Workload Factor	FY 1988 Actual		FY 1989 Estimated		FY 1990 Estimated		FY 1991 Estimated	
	Number	Credit	Number	Credit	Number	Credit	Number	Credit
Petitions Filed:								
Chapter 7	431,231	1,684	471,000	1,839	547,000	2,137	598,000	2,330
Chapter 11 and 12	20,806	380	19,000	346	22,000	408	23,000	420
Chapter 13	152,695	299	173,000	340	206,000	...	229,000	...
Subtotal	604,732	2,363	663,000	2,525	775,000	2,943	850,000	3,200
Other Factors:								
Adversaries	57,879	62	52,000	56	55,000	59	55,000	59
Noticing	604,663	836	640,000	975	740,000	1,139	810,000	1,250
Closing Act Cases[1]	2,000	20	0	0	0	0	0	0
Miles Driven	1,400,000	18	1,400,000	18	1,400,000	18	1,400,000	18
Trustee Liaison[2]	...	40	...	43	...	47	...	50
Constant Factors	...	317	...	317	...	317	...	317
Additive Factors[3]	...	27	...	102	...	126	...	148
Subtotal[4]		1,320		1,511		1,706		1,842
Less: Clerks of Court		-90		-90		-90		-90
Total Positions Justified by Formula		3,593*		3,946*		4,559*		4,952*
Less: Positions Saved From Automation and Delegation of Noticing Functions		-77		-87		- 96		-105
Total Positions Needed		3,516		3,859		4,463		4,847

1/ Closing Act cases are quickly disappearing. No credit is provided for the residual work of closing the remaining cases.

2/ U. S. Trustees under the Department of Justice oversee bankruptcy trustees in the management of estates. The positions included herein are for liaison and other clerk's activities as measured by the work measurement study.

3/ Includes primarily positions for automation.

4/ Excludes court reporters, electronic court recorder operators, and estate administrators.

Application of the factors developed by the work measurement formula to the projections of workload for fiscal year 1991, including the addition of additive positions for the implementation of automation, shows a need for 4,952 positions. By deducting from this estimate the 105 positions saved as a result of the contracting out of bankruptcy notices, the number of positions required for fiscal year 1991 is reduced to 4,847.

b. Integrated Automation Support (240 positions, $3,260,000)

The Ad Hoc Committee on Automation Staffing of the Judicial Conference Committee on Judicial Improvements has recently completed a study and issued a report on staffing for PC-based systems entitled Staffing for Decentralized Automation: An Integrated Approach. This report recommends that courts be provided with additional positions to support integrated automation in the courts including hardware and software support for the large number of PCs in the courts. The Judiciary is now beginning the process of providing standardized PC hardware and software in all the Federal courts as part of an office automation program. Support for the thousands of PCs presently in the courts and expected to be purchased over the next several years will require additional positions in clerks' offices. It is estimated that 240 additional positions will be required by fiscal year 1991 for PC automation support. This request includes 3 months funding for salaries and benefits $2,315,000 and operating expenses Of $945,000.

c. Criminal Fines Collection: (40 positions, $900,000 three reimbursable positions)

The Criminal Fine Improvements Act of 1987, Pub. L. No. 100-185, transferred responsibility for receiving criminal fines and assessment payments from the Department of Justice to the courts. In order to meet the requirements of Pub. L. No. 100-185 with respect to felony and other non-CVB cases, the Administrative Office is establishing a single national fine center, as envisioned by Congress, to provide current information on the payment and collection of fines and penalties. "It is expected that the Director will establish a centralized and highly automated entity, similar to the Central Violations Bureau that currently processes forfeitures of collateral in cases initiated by citation or violation notice. This new fine-processing entity will replace the fragmented system that now exists for receiving fine payments and will enable retrieval of up-to-date information on the status of any obligation covered by the system." (House Report No. 100-390, 100th Congress, Pg. 2140, 1987).

In order to provide a completely automated full-service system, the fine center will be tied to the new ICMS electronic docketing system for criminal cases to the probation automated case tracking system.

The fine center will operate an automated system that would provide current information on the payment of all fines, assessments and restitution imposed by the courts in non-CVB cases. It would be tied electronically to the New Criminal and PACTS automated systems. Until these systems are operational, data would be entered manually by the center from hard copies of Judgment and Commitment forms. The fine center will furnish current balances, compute interest, send monthly statements and notices to debtors, track delinquencies and defaults. The fine center will provide information to probation officers, clerks, and United States attorneys and will relieve those officers of the responsibility of maintaining any local records of payments or balance. The request of $900,000, includes three months funding of $580,000 for salaries and benefits and $320,000 for operating expenses. It is proposed that the source of funding for this center, estimated to cost $3.1 million, come in part from appropriated funds of the Crime Victims Fund. The Judiciary is authorized to receive $2.2 million in collections from the Crime Victims Fund after it has collected $125 million.

Reimbursable authority is requested for three additional positions required to prepare projections for criminal fine collection. Funding will come from the overage in the overage in the Victims Crime Fund.

d. Court Interpreter Positions (6 positions, $150,000)

An additional six positions, five full-time interpreter and one deputy clerk coordinator position, are requested for fiscal year 1991. The interpreter positions would be allocated to the following courts:

Court	Interpreters
New Jersey	1
California (N)	1
California (E)	1
California (S)	1
Florida (S)	1
Total	5

By employing interpreters the courts save money on contractual costs and have interpreters available when needed. In some parts of the court system, certified interpreters either are not resident or competition for their services is so high from state and local courts or the private sector that the only way to ensure their availability when needed is to employ them. Employing staff interpreters more than offsets the cost of freelance interpreters who are now paid $210 per day. Scheduling is simplified and less time is wasted by deputy clerks in managing the freelance interpreters.

The interpreter positions are requested at grade JSP-14 as approved by the Judicial Conference.

The deputy clerk coordinator position for the Eastern District of California (grade JSP-6) is required to manage the rapidly growing use of interpreters required in this district. Funds are included in this request for $130,000 for three months funding for salaries and expenses and $20,000 for operating expenses.

e. Court-Annexed Arbitration ($375,000)

An additional $375,000 is requested to expand the court annexed arbitration program in fiscal year 1991. The court-annexed arbitration program is funded at $500,000 for fiscal year 1990 for 10 courts. This amount covers the compensation and expenses of arbitrators. For fiscal year 1991, ten additional courts will be authorized by the Judicial Conference to establish new programs pursuant to 28 U.S.C. Sec. 658. These courts will be limited to arbitration with the consent of the parties only (voluntary). With the expectation that fewer cases will be referred to arbitration in the ten new courts, it is estimated that for fiscal year 1991, an increase of $175,000 over 1990 funding levels will be required to fund the programs. In addition, an estimated $50,000 will be required in 1991 to expand programs in the Eastern District of Pennsylvania and the District of New Jersey which have increased the limitation in money damages with respect to cases involving mandatory arbitration to the $100,000 ceiling.

Twenty-one temporary-indefinite positions to process cases referred to arbitration have been authorized and funded for the arbitration program presently in effect in the first ten pilot courts with mandatory arbitration. For fiscal year 1991, an additional ten temporary-indefinite positions at grade JSP-11 are required to meet the needs of expanding the program to ten additional courts. The sum of $150,000 will be required to fund these temporary positions for six months.

Item 10. Probation and Pretrial Services Personnel (three months) (255 positions, $4,255,000)

For fiscal year 1991, 255 additional permanent positions are requested for the Federal Probation offices and Pretrial Services offices (excluding requests for home confinement, sentencing guidelines and violent crime and drug initiatives. The request of $4,255,000 includes $2,465,000 for salaries and benefits for 3 months and $1,790,000 for operating expenses.

Probation Office

The three major indices of the probation workload (the number of persons received for supervision during the course of a year, the number of persons under supervision, and the number of investigation reports prepared) are all increasing. These changes are illustrated in the following workload tables.

Persons Received for Supervision

The following is a comparison of the number of persons received by type of supervision. Projections for fiscal years 1989 and 1990 are included. Crimes for which offenders may be prosecuted by the courts run from homicide to extortion and anti-trust violations.

There are 13 major categories of crimes included, three of which, Fraud, Miscellaneous and Federal Statutes have 11, nine and 11 subcategories respectively. The ratio of defendants to cases filed remained at 1.4, with cases rising from 43,292, in the year ending June 30, 1987, to 44,585, in the following 12 months. This represents a rise of three percent in cases filed and resulted from substantial increases in several offense categories. Drug-related offenses rose by 16 percent to 10,291, with those involving only narcotic drugs such as heroin and cocaine growing by 17 percent. Marijuana violations grew by 13 percent. This represents a growth in drug prosecutions of nearly 84 percent since 1984. Immigration offenses rose 16 percent, in the 12 months ending June 30, 1988, to 1,894 filings. Cases involving passport fraud rose from 144 to 354, or 146 percent, while those concerned with false claims and statements went up 21 percent to 1,672. Sex offenses, which represent a very small portion of the overall criminal caseload rose 43 percent to 511 filings. Since 1984, sex offenses prosecuted in the district courts have more than tripled.

Persons Received by Type of Supervision

Fiscal Year	Court Probation	U.S. Magistrate Probation	Supervised Release, Parole*	Mandatory Release	Military Parole	Total
1984	14,748	7,487	7,723	2,278	239	32,475
1985	14,937	7,972	7,502	2,610	283	33,354
1986	16,460	8,552	7,885	2,957	401	36,255
1987	16,630	8,040	8,566	3,649	434	37,319
1988	15,206	8,354	9,694	4,166	489	37,909
Estimate						
1989	14,200	8,300	11,000	4,200	500	38,200
1990	13,600	9,200	14,600	4,600	500	42,500
1991	12,800	9,500	18,100	5,000	600	46,000

*Includes 8,400 special parole cases for 1991.

Persons Under Supervision

The following table shows the number of persons under supervision by type of supervision at the close of the respective fiscal years, and provides projections for fiscal years 1989, 1990 and 1991.

Persons Under Supervision by Type of Supervision

Fiscal Year	Court Probation	U.S. Magistrate Probation	Supervised Release Parole*	Mandatory Release	Military Parole	Total
1984	35,932	9,528	14,595	1,210	337	61,602
1985	37,661	10,376	14,945	1,496	363	64,841
1986	40,381	11,074	15,015	1,731	501	68,702
1987	42,960	11,360	16,030	2,141	593	73,084
1988	43,545	11,658	17,824	2,511	688	76,226
Estimate						
1989	42,900	11,500	19,600	2,700	700	77,400
1990	43,900	11,900	23,200	3,300	700	83,000
1991	43,700	11,700	27,000	3,800	800	87,000

*Includes 10,800 special parole cases for 1991.

Investigative Reports

Investigative reports have increased from 146,790 in fiscal year 1988 to 148,872 in 1989, an increase of 1.4 percent. The greatest specific increase was in the area of presentence with a total gain of approximately 1,000 reports since 1988.

Type of Investigation	1985	1986	1987	1988	1989
Presentence/Postsentence Investigation	34,721	37,522	38,560	38,592	40,312
Collateral Investigation for Another District	26,037	29,097	29,631	28,760	29,090
Pretransfer Investigation	8,486	8,996	8,894	9,451	9,448
Alleged Violation Investigation (Probation & Parole)	13,511	14,256	15,587	16,543	17,215
Prerelease Investigation for a Federal or Military Institution	6,979	8,059	8,669	10,302	10,643
Special Investigation Regarding a Prisoner in Confinement	7,005	7,418	7,088	6,851	6,991
Furlough and Work Release Reports for Bureau of Prisons Institution	5,603	6,400	6,496	6,628	6,438
Supervision Reports	24,679	24,597	26,170	27,698	27,441
Parole Revocation Hearing Reports	1,690	1,678	1,659	1,965	2,130
TOTAL	128,711	138,023	142,763	146,790	149,708

Work Measurement Study and Projected Staff Needs

A work measurement study of probation offices was completed in June 1981. This study developed a staffing ratio based on the number of offenders supervised, the level of supervision required (high activity/low activity), the number of presentence, postsentence, collateral, and violation reports completed; and the number of drug aftercare clients receiving services. The staffing ratio also considered requirements for clerical support, management support, and miles traveled while on official business.

Pursuant to the Pretrial Services Act of 1982, services are to be provided through existing probation offices, offices established specifically for pretrial services, or by contract. Workload estimates and personnel requirements for the provision of pretrial services in probation offices are included in this section. Workload estimates for judicial districts which have established pretrial services separately from probation are shown in the next section. The three major workload factors are bail investigation, supervision, and services. Investigations are performed on all defendants except for petty offenses. Supervision and services are provided where required as conditions of release. In order to develop an estimate for personnel requirements, work measurement factors from a work measurement study completed in 1985 were applied to the projected number of criminal defendants for fiscal year 1990.

The projected workload computations are based solely upon application of the work measurement staffing factors. They do not take into consideration several additional tasks which have been assumed since the completion of the work measurement studies. One factor, pretrial reports, has not been adjusted since 1985 and probation officers believe the work measurement standards are now badly skewed. The workload computations do not take into consideration several additional tasks which have been assumed since the completion of the work measurement studies. Some examples are: (1) The Federal Probation System cooperates with the United States Marshals Service and the United States Parole Commission in the Witness Protection Program. Supervision services are currently provided for approximately 250 probationers and parolees who have been given new identities for security reasons following their testimony in major criminal prosecutions. Since these cases are not recorded in the number of persons under supervision, the staff required for this function are not included in the justification. (2) Probation officers are now preparing victim impact statements for presentence reports provided to the sentencing court as required by the Victim and Witness Protection Act of 1982. The victim impact statement contains information about the impact of the defendant's offense upon the victim, including any financial, social, psychological damage, and physical harm or loss. Upon request from the United States Attorney who is responsible for coordinating victim and witness services, probation officers are also called upon to provide crisis intervention counseling, consultation, and agency referral. (3) The Criminal Fine Enforcement Act levies new duties on probation officers in the collection of fines and reporting of delinquent fines to the courts. (4) The Bail Reform Act contained in the Comprehensive Crime Control Act of 1984 establishes three new types of detention hearings at the pretrial stage. Probation and pretrial services officers are called upon to develop factual information in preparation for the hearings, to prepare and update reports to judicial officers; and to attend and at times testify at the hearings. Additional staffing requirements for sentencing under the Sentencing Reform Act of 1984 are set forth separately.

The staffing ratios shown below are the work factor volumes or frequency of accomplishment for which one position is required. These ratios equate to the maximum workload volume expected of an employee working a normal 40-hour week.

Functional Work Group	Staffing Ratio
A. Probation Services	
1. Client Supervision	
a. High Activity	41:1
b. Low Activity	90:1
2. Presentence/Postsentence	97:1
3. Collaterals	357:1
4. Violations	212:1
5. Drug Aftercare and Contracting for Drug Aftercare	112:1
6. Travel (Miles)	60,000:1
7. Management and Support*	7.09:1
8. Clerical Functions**	1.66:1
B. Pretrial Services	
1. Criminal Defendants (excluding petty, traffic, and escape offenses)	323:1
2. Defendants Supervised	151:1
3. Diversion Reports	185:1
4. Divertees Supervised	162:1
5. Material Witnesses	197:1
6. Management and Support*	7.09:1
7. Travel (miles)	60,000:1
8. Clerical Functions**	2.25:1

*Number of positions authorized through application of staffing ratios one through five.

**Number of positions authorized through application of staffing ratios one through seven.

Work Group	Staffing Ratio	FY 1989 Actual		FY 1990 Estimated		FY 1991 Estimated	
		Workload Volume	Workyear Credit	Workload Volume	Workyear Credit	Workload Volume	Workyear Credit
A. Probation Service							
1. Clients Under Supervision							
a. High Activity Cases	41:1	34,666	821.1	37,400	912.19	39,200	956.09
b. Low Activity Cases	90:1	43,363	481.8	45,600	506.66	47,800	531.11
2. Pre- and Postsentence Reports	97:1	39,645	408.7	43,000	443.29	45,000	463.91
3. Collateral Reports	357:1	29,363	82.2	30,800	86.27	32,500	91.03
4. Violation Reports	212:1	16,781	79.2	18,000	84.90	19,000	89.62
5. Drug Aftercare Clients	112:1	16,247	145.1	19,700	175.89	22,000	196.43
Subtotal			2,018.1		2,209.20		2,328.19
B. Pretrial Services[1]							
1. Criminal Defendants	323:1	15,337	47.5	16,740	51.8	17,360	53.75
2. Defendants Supervised	151:1	7,669	50.8	8,370	55.4	8,680	57.48
3. Divertees Investigated	185:1	954	5.2	1,003	5.4	1,041	5.6
4. Divertees Supervised	162:1	689	4.3	775	4.8	775	4.8
5. Material Witnesses	197:1	191	1.0	215	1.1	222	1.1
Subtotal			108.8		118.5		122.73
C. Travel Mileage[2]							
1. Probation	60,000:1	9,744,801	162.4	9,853,398	164.22	10,537,200	175.62
D. Management and Support							
1. Probation	7.09:1		284.6		311.59		328.37
2. Pretrial	7.09:1		15.6		16.7		17.31
Subtotal			300.2		328.29		345.68
E. Clerical Functions							
1. Probation	1.66:1		1,485.0		1,617.47		1,706.13
2. Pretrial	2.25:1		56.1		58.1		62.24
Subtotal			1,541.1		1,675.57		1,768.38
TOTAL			4,130.6		4,495.78		4,740.60

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[1] Figures based on criminal defendants filed, excluding District of Columbia, petty offenses, traffic and escape.

[2] Includes pretrial travel.

Pretrial Services Requirements for Independent Offices

Thirty-two judicial districts have to date established pretrial services separate from probation. These 32 districts are listed below.

Arizona, California (C), California (E), California (S), California (N), Colorado, Connecticut, Florida (S), Florida (M), Georgia (N), Maryland, Massachusetts, Michigan (E), Minnesota, Missouri (E), Missouri (W), New Jersey, New Mexico, Nevada, New York (S), Ohio (N), Ohio (S), Oregon, Pennsylvania (E), Pennsylvania (W), Puerto Rico, Tennessee (W), Texas (S), Texas (W), Virginia (E), Washington (W), and Louisiana (E).

In addition, there are four metropolitan districts (districts with six or more judges) restricted by previous Congressional action from receiving additional staff unless independent offices are formed. These districts are Alabama (N), Illinois (N), New York (E), and Texas (N).

Workload estimates and personnel requirements for the provision of pretrial services in the 32 separate offices and four metropolitan districts which have not as yet established separate offices are included in this section. Requirements for pretrial services in probation offices are included under section a of this item.

INDEPENDENT PRETRIAL OFFICES - WORKLOAD AND STAFFING REQUIREMENTS

Work Group	Staffing Ratio	1989 Estimate		1990 Estimate		1991 Estimate	
		Workload Volume	Positions Required	Workload Volume	Positions Required	Workload Volume	Positions Required
1. Criminal Defendants	323:1	34,136	105.7	37,260	115.4	38,640	119.6
2. Defendants Supervised	151:1	17,067	113.0	19,320	127.9	19,320	127.9
3. Diversion Reports	185:1	2,124	11.5	2,318	12.5	2,318	12.5
4. Divertees Supervised	162:1	1,535	9.5	1,725	10.6	1,725	10.6
5. Material Witnesses	197:1	425	2.2	495	2.5	495	2.5
6. Management & Support	6.9:1	241.9	35.1	268.9	38.9	273.1	39.5
7. Travel	60,000:1	300,000	5.0	450,000	7.5	600,000	10.0
8. Clerical	2.25:1	307	125.3	315.4	140.16	322.6	143.3
Total			407.3		455.46		465.9

Item 10. Home Confinement (87 positions, $1,400,000)

The request of $1,400,000 includes $800,000 for salaries and benefits for three months and $600,000 for operating expenses.

The Anti-Drug Act of 1988 permits home detention or confinement as a condition of supervision in lieu of imprisonment. In April of 1989, the U.S. Sentencing Commission proposed amendments to their rules which would introduce "home confinement" (augmented by electronic monitoring) in lieu of community confinement for some offenders. Two pilot electric monitoring programs are already underway following a joint agreement between the Administrative Office, the Bureau of Prisons, and the U.S. Parole Commission. It is expected that of the 2,000 persons in home confinement by 1991, at least 1,000 will require augmented electronic monitoring services at $10 a day. Experience indicates that the monitoring of home confinement cases requires caseloads of approximately 25. This would require the following staff.

Home Confinement Staff Requirements

Probation Offices	1991 Required
Officers.................................	54
Clerks...................................	33
Total....................................	87

Probation and Pretrial Services
FY 1990 and FY 1991
Position Requirements

	1990 Authorized	1990 Required	1991 Required	Difference 1991 over 1990 Auth.
Probation Service:				
Probation Officers	2,645	2,645	2,792	147
Probation Assistants	40	40	40	...
Clerks	1,618	1,618	1,706	88
Subtotal	4,303	4,303	4,538	235
Probation Officers (Pretrial Services)	135	135	140	5
Clerks	58	58	62	4
Subtotal	193	193	202	9
Subtotal, Probation Service	4,496	4,496	4,740	244
Pretrial Services Offices:				
Pretrial Services Officers	315	315	323	8
Clerks	140	140	143	3
Subtotal, Pretrial Services Offices	455	455	466	11
GRAND TOTAL	4,951	4,951	5,206	255
Officers		...	54	54
Clerks		...	33	33
Total (Home Confinement)		...	87	87

Item 11. Additional Funding for Federal Sentencing Guidelines (116 positions, $1,980,000)

Sentencing guidelines for the Federal judiciary were issued in November 1987. The impact upon probation offices results from the application of many complex sentencing factors and the assessment of a defendant's criminal history which require new efforts in investigation and preparation of presentence reports. Probation officers, assisted by a special computer program, will apply guideline rules to specific factors and achieve a calculated a range of custody time, a period of supervision, and fine or restitution requirements which serve as the estimated sentence for courts to follow. Evidentiary hearings will be required to resolve disputed facts essential to guideline sentencing. Attorneys for the parties will submit written memoranda to the court and/or probation officer for relevant sentencing factors and objections. Sentencing data is often revised and recalculated by probation offices as necessary; issues which remain in dispute will be resolved at the sentencing hearing. Whereas reports used to be submitted just once for sentencing, they are now often rewritten or reworked based upon counsel involvement or a dispute resolution process. Based upon Sentencing Commission estimates, it is anticipated that 82 percent of all defendants sentenced will fall under these guidelines, in 1990. By 1991, it is expected that courts will require presentence procedures based on the guidelines in all cases.

Application of the probation work measurement formula, modified to account for the increased time required for a probation officer to prepare sentencing reports as described above, indicates that a total of 596 positions will be needed based on requirements in the probation offices for fiscal year 1991. The positions required by fiscal year are shown below.

	1990 Auth.	1990 Reqd.	1991 Reqd.	Diff. 1990 Auth. and 1991 Req.
Officers	299	299	368	69
Clerks	181	181	228	47
Total	480	480	596	116

The costs of these positions are summarized below:

	Salaries and Benefits	Operating Expenses ($000)	Total
116 positions (salaries and benefits at 3-month funding)................	1,120	860	1,980

Item 12. National Court Library System (28 positions, $380,000)

In fiscal year 1991, 28 additional library personnel are requested to continue the development of the National Court Library System, now consisting of 78 libraries. This number will complete the staffing contemplated under the existing formula. On October 1, 1991, the system will have completed 11 years of operation. Each court of appeals manages the library program within its circuit. The system, composed of the 12 circuit libraries and their satellites, manages and provides library and online information services to all judges, magistrates and other court personnel. As part of that service, the circuit libraries provide computer assisted legal research (CALR) support to 287 CALR terminals in 237 cities, most without a local staffed library operation. The circuit librarians are responsible for supporting the CALR in judges' chambers program. Five hundred (500) chambers received software programs in fiscal year 1988, and equal numbers will be added each year as office automation equipment is delivered. Librarians are the CALR experts. They do research for judges, judicial officers and law clerks. The librarians are also the circuit administrators, or "coordinators" of the CALR system. They arrange for training and usage by the users, provide help to judicial officers who desire personally to use the system and provide research for law clerks and provide support for the expansion of CALR system to judges' chambers which is currently occurring.

The development of an integrated court library structure assured court personnel of efficient and cost-effective library service and management of all lawbooks acquired for use in libraries and chambers. Professional librarians determine that all materials are current and available upon request. Infrequently requested material is borrowed on interlibrary loan, thus saving appropriated funds for the acquisition of the most needed lawbooks. Librarians ensure additional savings by encouraging the sharing of resources among all court personnel and by extensively transferring existing excess lawbooks to meet the requirements of libraries and chambers collections.

The Administrative Office supports this nationwide program by maintaining a computerized property accountability record of all titles, from which subscriptions can be kept current; monitoring and continuing the development of the CALR system; and, providing guidelines for appropriate lawbook purchases, the disposal of obsolete materials, and the transfer of current, but excess material.

In fiscal year 1981, a formula was developed to determine the number of satellite libraries and library personnel needed within each circuit to provide research service to all court officials. The formula, a 5:1 ratio, was based on the judgment of court officials who reasoned that the presence of five judicial officers (circuit, district, bankruptcy, and senior judges), in one location, would generate sufficient research to justify establishing a court satellite library.

The responsibility for coordination of the satellite libraries and personnel, as well as the total research information system including CALR within the entire circuit became the responsibility of the headquarters library as part of the reorganization plan. Naturally, more staff is needed at the headquarters library because of the scope of this responsibility.

When library staff calculations were originated by the 5:1 ratio in 1981, there were 210 projected library positions for 1,061 judges. This calculation of library positions continued through fiscal year 1986. Additional library positions to assist with the increasing need for library and CALR service among 1,520 authorized judicial officers were requested but not funded in fiscal years 1986, 1987, and 1988. In addition, full-time magistrates have been added to the calculations and the formula has been adjusted to 6:1. Because the number of judicial officers has increased to 1,567, the number of library positions should increase proportionately.

The inadequate staffing in the Judiciary's library research and information service impedes the productivity of the judges and their law clerks. Any margin for providing ordinary services to these additional judicial officers has been utilized, but cannot continue without additional staff. A crisis situation has now developed in the program because not only is the library structure required to serve 33 percent more judicial officers than originally planned, but it also must support the CALR installations -- 287 terminals in 237 cities -- as well as the about 800 chambers' CALR software expansion sites, up from the 50 original CALR locations established in 1981. Even the depository library status granted by the Library of Congress is jeopardized by these staff shortages. All this must be accomplished when the system is 78 positions short of the estimated requirement for full staffing.

If the situation continues without amelioration all progress made since fiscal year 1981 in developing a comprehensive and cost-effective library system for the Judiciary will collapse. The pressure to create extensive, individual chambers libraries will once again emerge. The fact that the library program received no new personnel during fiscal years, 1986 through 1988, coupled with the increase in the number of judicial officers and CALR locations served has had a dramatic impact on the library program.

In applying the 6:1 ratio to 1,567 judicial officers, 264 library positions could be justified to manage the increasing need for library and CALR service. For fiscal year 1991, the request is for 28 library positions in the phased-in program of library development, which will reach its maximum staff strength in fiscal year 1991.

When any new staff to be allocated under the formula to each circuit is approved by Congress, the positions are assigned to each chief judge of the court of appeals at the beginning of the fiscal year. The placement of new positions either in headquarters or in branch libraries generally is a joint decision of the judges, circuit executive and circuit librarian.

The following chart shows the number of positions authorized under the National Court Library System since fiscal year 1981:

National Court Library System
Position Summary

Fiscal Year	Total Number of Positions	Increases Over Prior Year
1981	96*	0
1982	115	19**
1983	125	10***
1984	145	
20****		
1985	165	20*****
1986	165	0
1987	166	1******
1988	166	0
1989	186	20+
1990	236	50++
1991	264	28

*CALR Operator positions added to library program.

**Includes new Eleventh Circuit librarian authorized separately in 1982.

***One CALR position added to program in First Circuit plus nine positions authorized by Congress.

****One CALR position assigned to program in the Ninth Circuit, plus 19 positions authorized by Congress.

*****One CALR position added to program in the Sixth Circuit, plus 19 positions authorized by Congress.

******One CALR position added to program in the Fifth Circuit.

+Twenty positions authorized by Congress in 1988, but not funded until 1989.

++Fifty positions authorized by Congress in 1990

The following is a circuit allocation of the full-time library positions presently authorized and the proposed allocation of the additional 28 positions required in fiscal year 1991 to continue the development program of the United States Court Library System:

Circuit Headquarters	Authorized Total Number of Libraries	Authorized Staff FY 1990	Required Staff FY 1991 Increase	Required Staff FY 1991 Total
DC	1	7	1	8
First	3	9	1	10
Second	7	22	2	24
Third	7	19	2	21
Fourth	4	19	2	21
Fifth	10	26	3	29
Sixth	9	24	3	27
Seventh	6	18	2	20
Eighth	8	17	2	19
Ninth	22	40	5	45
Tenth	7	14	2	16
Eleventh	8	21	3	24
Total	92	236	28	264

Summary

The sum of $380,000 is requested for these 28 additional professional positions for the national court library system; $240,000 for compensation and benefits (3-month funding) and $140,000 for operating expenses.

Item 13. Electronic Court Recording Program (50 positions $740,000)

Magistrates (50 positions)

When the policy of taking records of magistrates proceedings was developed, it was assumed that few transcripts would be requested. Thus, additional court recorder positions were not obtained to record magistrates proceedings. Instead, magistrates were authorized to purchase electronic sound recording equipment to use in their courtrooms. No operator positions were requested to operate the recording equipment and log the proceedings. Tapes of magistrates proceedings, unattended by an operator, are difficult to transcribe since there is no log sheet prepared during the proceedings indicating who is speaking. Due to the problems encountered in transcribing magistrates tapes, many transcription firms refuse to prepare such transcripts. When transcripts are required, courts must use a contract court reporter or a staff court reporter. Unattended tape recorders have proven to be inadequate in keeping a verbatim record which can be transcribed accurately and certified.

The poor transcript quality of magistrates proceedings has also impacted on the overall reputation of electronic sound recording. District judges are less inclined to elect electronic sound recording systems based on their past experience with transcripts produced from tapes of magistrates.

Over the years, magistrates proceedings have become more complex and the need for transcripts for review or appeals has increased. Because of the new requirements for transcripts imposed by pre-detention hearings and increased use of magistrates in civil consent cases (28 U.S.C. 636(c)), courts have requested that operator positions be provided to take adequate electronic records that can be transcribed easily and accurately. Existing staff resources are not capable of recording and logging magistrates' proceedings.

In 1990, 10 electronic court recorder positions were approved by Congress for the use of Magistrates. Fifty (50) additional electronic court recorder operator positions are requested for 1991 to cover magistrates' proceedings in all the federal courts. These positions will be divided among the district courts which have a requirement to prepare transcripts from taped proceedings. Allocation will be based on each court's total reporting resources available, i.e., total reporters and operators allocated.

The sum of $490,000 is requested for the increase of 50 positions for compensation and benefits (3-months funding) and $250,000 for operating expenses.

Item 14. Space Alterations to be Accomplished in Fiscal Year 1991 ($9,875,000)

In fiscal year 1991, an increase of $9,875,000 over the $9,860,000 available in 1990, will be required to provide funding of necessary alteration projects. These projects, as shown below, mainly relate to providing judicial officers with adequate facilities to perform their duties, and to realigning or relocating court units for the effective and efficient execution of court business.

The following table provides an overview of the purposes for which 1991 funding will be used:

Fiscal Year 1991 Alteration Projects by Category

Types of Projects		Estimated Cost
I.	Alteration projects for:	
	a. Circuit Judges	$ 985,000
	b. District Judges	2,830,500
	c. Bankruptcy Judges	300,000
	d. Magistrates	415,000
	e. Senior Judges	1,250,000
II.	Clerks' Offices	464,000
III.	Health and Safety	800,000
IV.	Court Realignments (Expansion and renovation of space for more than one court unit).	1,251,200
V.	Relocation of Court Units	359,000
VI.	Library Alterations	80,000
	TOTAL (rounded)	$19,735,000

Of the total amount required in 1991 of $19,735,000, approximately $3.4 million is for projects in the courts of appeals, $12.2 million is for projects in the district courts (including magistrates, clerks offices, probation offices, and pretrial services offices), and $4.2 million is for alterations in the bankruptcy courts.

The following table details the projects which are anticipated to be accomplished during fiscal year 1991:

Location	Project	Estimated Cost
	District of Columbia Circuit	
Court of Appeals		
Washington, D.C.	Courtroom and adjunct facility renovations	$186,000
	Second Circuit	
District Court		
Buffalo, NY	Clerk's office expansion	25,000
New York, NY	Courtroom and Clerk's office renovations	58,000
Rochester, NY	District Court Chambers and courtroom alterations, Clerk's Office and Probation expansion	400,000
Bankruptcy Court		
Buffalo, NY	Clerk's office expansion	25,000
Second Circuit Total		508,000
	Third Circuit	
Court of Appeals		
Erie, PA	Chambers Relocation	220,000
District Court		
Johnstown, PA	District Court alterations	160,000
Philadelphia, PA	Realignment, and expansion alterations at Byrne Building	515,000
Williamsport, PA	Replacement Judge's chambers	40,000
Bankruptcy Court		
Newark, NJ	Clerk's office expansion	75,000
Pittsburgh, PA	Clerk's office, chambers, and courtroom alterations	150,000
Third Circuit Total		1,160,000

Fourth Circuit

Court of Appeals		
Richmond, VA	Relocation and expansion of facility	662,000
District Court		
Clarksburg, WV	Renovation of District Court	150,000
Fourth Circuit Total		812,000

Fifth Circuit

Court of Appeals		
San Antonio, TX	Expansion and renovation of satellite library	30,000
District Court		
Amarillo, TX	Clerk's office and chambers alterations	130,000
Dallas, TX	Courtrooms, chambers, and Clerk's office renovation and expansion	200,000
Houma, LA	Courtrooms, chambers and Probation Office renovation and expansion	250,000
Jackson, MS	District Court expansion	805,000
Lake Charles, LA	District Court expansion	100,000
Laredo, TX	Facilities for Probation and Pretrial Services offices and Judge's Chambers	60,000
Monroe, LA	Courtroom and chambers expansion	30,000
New Orleans, LA	Replacement Judges facilities, Probation Office and Pretrial Service expansion	240,000
Bankruptcy Court		
Dallas, TX	Courtroom, chambers and Clerk's office alterations	250,000
Fifth Circuit Total		2,095,000

Sixth Circuit

Court of Appeals		
Cincinnati, OH	Resident/non-resident chambers	565,000
District Court		
Akron, OH	Construction of courtroom	300,000
Chattanooga, TN	Judge's chambers and courtroom	80,000
Columbus, OH	Relocation and construction of courtrooms	323,000
Detroit, MI	Construction of Judge's chambers for replacement and Senior Judges	1,000,000
Sixth Circuit Total		2,268,000

Seventh Circuit

District Court		
E. St. Louis, IL	Renovation of courthouse relocation of probation office	1,116,000
Milwaukee, WI	Renovation of Magistrate hearing room and secured storage facilities	45,000
South Bend, IN	Expansion for Magistrate, Clerk's office, and Bankruptcy courtroom	100,000
Urbana/Champaign, IL	Renovation of courthouse	200,000
Bankruptcy Court		
Milwaukee, WI	Construction of courtrooms and adjunct facilities	1,000,000
Seventh Circuit Total		2,461,000

Eighth Circuit

Court of Appeals		
Kansas City, MO	Secure elevator and parking area	800,000
Little Rock, AR	Construction of courtrooms and chambers for Senior Judges	500,000
Pierre, SD	Construction of courtroom and chambers for Senior Judges	150,000
St. Louis, MO	Construction of courtroom and chambers	250,000
District Court		
Des Moines, IA	District Court renovation and expansion	200,000

Eighth Circuit (Continued)

Bankruptcy Court		
Omaha, NE	Expansion and renovation of Clerk's office	150,000
Eighth Circuit Total		2,050,000

Ninth Circuit

District Court		
Oakland, CA	Renovation and expansion	2,000,000
Reno, NV	Jury assembly, library and Clerk's office expansion	249,000
San Diego, CA	Renovation of courtrooms	634,000
San Jose, CA	Construction of courtrooms and chambers	1,285,000
Bankruptcy Court		
Sacramento, CA	Expansion and Renovation of courts	600,000
San Francisco, CA	Renovation and expansion - alterations during Asbestos removal	889,200
Santa Rosa, CA	Relocation of Bankruptcy court	343,000
Ninth Circuit Total		6,000,200

Tenth Circuit

Bankruptcy Court		
Salt Lake City, UT	Clerk's Office relocation and expansion	60,000
Tulsa, OK	Relocation and expansion from leased space	488,000
Tenth Circuit Total		548,000

Eleventh Circuit

District Court		
Ft. Lauderdale, FL	Court expansion and renovation	374,000
Huntsville, AL	Library renovation and expansion	50,000
Mobile, AL	Construction of courtroom	105,000
Montgomery, AL	Expansion of chambers	200,000
Orlando, FL	District Court expansion	235,000
Savannah, GA	Renovation of chambers	45,500
West Palm Beach, FL	District Court expansion and renovation	437,000

Eleventh Circuit (Continued)

Bankruptcy Court

Macon, GA	Bankruptcy Court renovation and expansion	200,000
Eleventh Circuit Total		1,646,500
Total Required for Fiscal Year 1991		$19,735,000
Total Available in Appropriation Base		9,860,000
Additional amount required (difference)		9,875,000

Item 14b. Space Alterations Deferred in Fiscal Year 1990 ($10,000,000)

In fiscal year 1990, $10,000,000 in tenant alteration projects were not able to be accomplished. These projects were deferred for two significant reasons:

(1) A shortfall of approximately $6.0 million in the office space rental billing from the General Services Administration. This shortfall resulted from a greater than anticipated amount of square footage being added to the Judiciary's space inventory than was estimated when the 1990 budget was developed. Funds in 1990 were moved from the object classification for tenant alterations to the object classification for GSA space rental payments to cover the cost of the increased square footage.

(2) A shortfall of at least $4.0 million for the reimbursable costs of judicial standards in prospectus projects approved prior to fiscal year 1990. When the fiscal year 1990 budget was developed, it was anticipated that the GSA would fund these costs. CSA officials subsequently notified the Administrative Office that these costs were the responsibility of the Federal Judiciary.

In many instances, deferral of alteration projects requires the same court organizational unit to be located in different physical locations, at times in different buildings. Magistrates chambers and hearing rooms can be located in areas not secured by Court Security equipment or officers. In criminal matters before magistrates, therefore, the magistrate is required to leave his chambers, and must move to conduct proceedings in a secure part of a building, or in an entirely separate building which has been secured. In these instances it becomes impossible for the magistrate to conduct conferences in his or her chambers, where relevant documents and access to staff is essential.

In probation and pretrial services offices, inadequate facilities can affect the confidential relationship between probation officer and client. In some probation and pretrial facilities, clients and officers are required to meet in makeshift offices which have been constructed from portable partitions. In these instances, other probation personnel and clients can overhear conversations between officer and client.

The burgeoning bankruptcy caseload has turned what at one time were adequate facilities into mazes of files, with virtually no room for public transactions or reception areas. The increases in criminal activity, particularly related to drug prosecutions, has led to civil case backlogs which could be heard by visiting judges but in some instances cannot be heard due to lack of visiting facilities.

Item 14c. Reimbursable costs of Prospectus Projects ($13,800,000)

As described above, in accordance with the 1983 guidelines published by the General Services Administration, the Judiciary is required to pay the GSA for costs of items considered by GSA to be reimbursable from the requesting agency. In the case of the Federal Judiciary, these items include such necessities as the judge's bench, witness boxes, jury boxes, and chair rails which separate the public seating from the judge's bench.

In the past the GSA had almost uniformly paid for these items in prospectus level projects, i.e., projects costing $1.5 million and over in 1990 and thereafter, $500,000 prior to 1990. Although the 1983 GSA guidelines do require the Judiciary to pay these reimbursable costs, the policy for actually charging the Judiciary for these items varied widely among the individual GSA regional offices.

In early 1988, the central GSA office clarified its policy on reimbursable alteration costs for Judiciary projects. That policy requires all GSA regional offices to consistently apply the 1983 guidelines to all Judiciary projects, including those which are of prospectus level. The GSA central office recognized that the Judiciary had not been afforded the opportunity to request funding from the Congress for projects approved prior to fiscal year 1990, and therefore, has agreed to fund reimbursable costs related to prospectuses approved prior to 1990. Thereafter, however, the Judiciary is responsible for all reimbursable costs. It is anticipated that these costs will total $21,800,000 in fiscal year 1991, representing an increase of $13,800,000 over the $8,000,000 available in the 1990 appropriation base.

The following is a description of prospectus level projects to be accomplished in fiscal year 1991. This listing is subject to the approval of the GSA's Project Review Board, The GSA Administrator, and the Office of Management and Budget.

First Circuit

Hato Rey, Puerto Rico (Design Costs)......... $224,000

At the present time, the GSA is proposing the construction of a new facility at Hato Rey to accommodate the needs of the Federal Judiciary and other Federal agencies. The Administrative Office has informed GSA officials on several occasions, that the Judiciary supports retention of the Old San Juan Courthouse, rather than construction of a new facility at Hato Rey, to accommodate the current and long term needs of the courts in Puerto Rico. The Judiciary commissioned the Army Corps of Engineers to conduct a cost analysis of renovating the Old San Juan facility. That study concluded that the Old San Juan Courthouse could be renovated to accommodate the courts needs in Puerto Rico for approximately $12,000,000. The Old San Juan building can provide space for the court of appeals, senior judges, and the bankruptcy court, but has been declared surplus to the Government's needs, and therefore available for use by the homeless.

The GSA has estimated that approximately $19.5 million in reimbursable costs will be required from the Judiciary by 1992 to complete construction of a new facility. As recently as June 1989, the Judiciary informed the GSA central office planning staff, that the Federal Judiciary does not support this project, but does support renovation of the Old San Juan Courthouse.

Worcester, Massachusetts (Design Costs)...... $108,000

The prospectus proposes renovation of the Harold Donahue Federal Building and Courthouse. The project provides for construction of 10,500 additional square feet of space to accommodate three new courtrooms and ancillary facilities for the district court, bankruptcy court and the U.S. Magistrate.

Second Circuit

Buffalo, New York (Design Costs)............. $99,000

The prospectus proposes repair and alteration of the Michael J. Dillon Post Office and Courthouse. The project will include construction of a district courtroom with chambers and a magistrate's hearing room and chambers in space currently occupied by the Postal Service and the Department of Justice, as well as visiting judge's chambers.

White Plains, New York (Design Costs)......... $477,000

The prospectus proposes construction of 79,740 occupiable square feet of space. Presently, the U.S. Courts are housed in a leased facility with only 34,585 square feet of space. The leased building was designed as an office building and is substandard for court purposes. A cost analysis recommended construction in lieu of continued leasing.

Third Circuit

Camden, New Jersey (Construction Costs)..... $2,735,000

By resolution dated May 5, 1988, the Committee on Public Works and Transportation of the House of Representatives authorized construction of an 82,000 square foot extension to the existing Post Office and Courthouse. The finished court facilities will include: four district courtrooms, three magistrate courtrooms, a bankruptcy courtroom and adjunct facilities with room for expansion.

St. Thomas, Virgin Islands (Design Costs)..... $129,000

The prospectus proposes construction of a 15,225 square foot annex to the existing U.S. Courthouse and Federal Building. Expansion will include two courtrooms with adjunct facilities; district and circuit court chambers; and a magistrate's chambers. The project is necessary because the majority of commercial buildings in St. Thomas are historic in nature, and, therefore, lessors are reluctant to perform the alterations necessary for court usage.

Fifth Circuit

Houston, Texas (Construction Costs)......... $2,945,000

The prospectus proposes renovation of 49,000 square feet of space in the Federal Building-Courthouse. Space will be vacated by the Federal Bureau of Investigation. The project will include construction of district judges' chambers, adjunct facilities and five district courtrooms.

Sixth Circuit

Indianapolis, Indiana (Construction Costs).. $4,536,000

The prospectus proposes repair and alteration of the Federal Building and Courthouse. A new courtroom and chambers will be constructed for a judge who currently has no courtroom and inadequate chambers. The project will expand the court facilities and will include two new bankruptcy courtrooms and two new magistrate courtrooms.

Knoxville, Tennessee (Design Costs).......... $251,000

The prospectus proposes renovation of the Post Office-Courthouse. Space vacated due to the relocation of the Postal Service will allow court related activities now housed in three leased locations to be consolidated at one location.

Seventh Circuit

Chicago, Illinois (Construction Costs)..... $1,589,000

The prospectus proposes the renovation of the Everett M. Dirksen Building. Expansion will provide spaces for eight judges. In addition, four bankruptcy chambers will be constructed to consolidate all bankruptcy activities onto two floors. This project provides for realignment of all court activities and future housing needs.

Eighth Circuit

Minneapolis, Minnesota (Design Costs)........ $118,000

The prospectus proposes the renovation of the Federal Building - Courthouse and construction of a courthouse on the existing parking lot. The renovated space in the Federal Building will house court and other agencies currently in leased space. The new courthouse will provide replacement facilities with sufficient space to meet the existing and expansion needs of the courts.

St. Paul, Minnesota (Construction Costs)... $1,602,000

The prospectus proposes repair and alteration of the Warren Earl Burger Federal Building - Courthouse. Vacated space will provide two bankruptcy courtrooms on the second floor to replace existing courtrooms on the sixth floor which will be used by the magistrates. A third courtroom is being planned for a bankruptcy judge.

Ninth Circuit

Boise, Idaho (Design Costs)................. $164,000

The prospectus proposes the construction of a 110,000 occupiable square foot Courthouse on the parking lot of the existing Federal Building - Courthouse. Chambers and courtrooms will be provided for three active, two senior and one visiting district judge, two bankruptcy judges and two magistrates. Chambers only will be provided for two circuit judges and one visiting district judge.

Pasadena, California (Design Costs)........... $168,000

The prospectus proposes renovation of the Federal Office Building. The project converts vacated space and unfinished areas to offices and chambers for five resident judges and ten nonresident judges.

Portland, Oregon (Design Costs)............... $161,000

The prospectus proposes construction of a 275,000 occupiable square foot Courthouse - Federal Building. The courthouse will provide 13 furnished courtrooms for six district judges, three senior district judges, three magistrates and one visiting judge. For future needs, the building will accommodate additional courtrooms and attendant space.

Reno, Nevada (Design Costs)................... $258,000

The prospectus proposes the construction of a 130,000 occupiable square foot courthouse in the parking lot adjacent to the existing C. Clifton Young Federal Building - U.S. Courthouse. The building will be designed for future expansion to accommodate a total of six district judges (active, senior and visiting), three bankruptcy judges, four magistrates, and three circuit judges currently housed in leased space.

Sacramento, California (Construction Costs). $1,672,000

The prospectus proposes a 21,000 gross square foot extension and renovation of the John E. Moss Federal Building - U.S. Courthouse. The court facility will include a district courtroom, two magistrate courtrooms and jury assembly room.

San Diego, California (Construction Costs).. $1,631,000

The prospectus proposes needed expansion space by enclosing a 14,040 square foot moat. The added space will provide a circuit judge's chambers, a magistrate's hearing room and office, a permanent jury assembly lounge, and expansion for the court's clerk.

Spokane, Washington (Construction Costs)...... $220,000

The prospectus proposes renovation of the Federal Building - Post Office. The project will correct extensive safety deficiencies and areas of unusable space. The district court will expand by 15,245 square feet for one new full time judge and one senior judge. The bankruptcy court will expand by 2,790 square feet for one new bankruptcy judge. An additional 4,095 square feet will be made available for ancillary functions.

Tenth Circuit

Oklahoma City, Oklahoma (Construction Costs).................................. $2,491,000

The prospectus proposes alteration and repair of the Oklahoma City Federal Building - Courthouse. The expansion is needed for three district judges. The project will also correct life and fire-safety conditions.

Eleventh Circuit

Atlanta, Georgia (Construction Costs)........ $159,000

The prospectus proposes alteration and repair of the Richard B. Russell Federal Building - Courthouse. Public Law 99-554, approved October 27, 1986 authorized the addition of two bankruptcy judges. These judges are currently sharing space with the district court. To accommodate the expansion requirements, the bankruptcy court will relocate to the 13th and 14th floors. The building's elevators will be reconfigured to provide secured access to the court.

Item 14d. Long Range Facility Planning ($125,000)

At its March 1988 meeting, the Judicial Conference approved the recommendation of its Space and Facilities Committee to require each judicial district to complete facilities plans which will be used to determine short, medium, and long range housing needs of the courts. In 1991 it is estimated that $125,000 in contractual services funding will be required to analyze the results of the facilities plans, complete plans which have not been undertaken, and incorporate planning data received from the courts into Administrative Office databases and housing plans.

Item 15a. Drug Dependent Offenders Program ($9,250,000)

The sum of $9,250,000 is required in addition to the $19,500,000 available in 1990.

In fiscal year 1988, chief probation officers reported 12,247 drug dependent clients in treatment with 6,377 persons receiving some form of contract treatment and 5,870 receiving treatment from non-contract programs or directly from probation staff. This was an increase of 8 percent over fiscal year 1987.

Improved identification skills of probation officers, recent drug legislation, and increased prosecution of drug abusing offenders have resulted in an increasing aftercare population and an increase in urine specimens tested. A probation officer's skill in identifying a drug user or abuser is a major requirement of his job. He or she must be thoroughly familiar with offense behavior, arrest history, family and health, and employment history and these factors must be examined and analyzed, for evidence of a history of drug abuse. The nature of previous charges and information from the subject's family, employer and associates is needed to fill in any gaps in information. The probation officer must also be expert in terms of the identification of a drug user, from physical signs usually evident. These pieces of evidence must be put together and, whenever possible, the subject must be confronted with it and convinced of his or her problem. When such identifications are made, the probation officer must institute a urinalysis regimen and arrange for treatment and care in appropriate cases.

The following data show the number of drug aftercare cases for fiscal years 1984 through 1988 with estimates for 1989 and 1990. The estimates are based on increases in the population of all persons under super-vision in the probation system and recent increases in the aftercare population.

PERSONS RECEIVING DRUG INTERVENTION SERVICES

DRUG TREATMENT

	Sept 1984	Sept 1985	Sept 1986	Sept 1987	Sept 1988	Sept 1989	Sept 1990	Sept 1991
Contract	2,945	2,710	3,844	5,016	6,377	8,082	7,775	9,050
Non Contract	2,638	3,800	4,158	5,363	5,870	6,113	7,775	9,050
TOTAL	5,583	6,510	8,002	10,379	12,247	14,195	15,550	18,100

PERSONS RECEIVING ALCOHOL TREATMENT

	June 1987	Sept 1987	Sept 1988	March 1989	Sept 1990	Sept 1991*
Contract	405	536	754	809	790	900
Non Contract	2,272	2,407	2,444	2,405	2,660	3,000
TOTAL	2,677	2,943	3,198	3,214	3,450	3,900

* Estimates

TOTAL PERSONS RECEIVING DRUG AND ALCOHOL TREATMENT

	Sept 1988	Sept 1989	Sept 1990	Sept 1991*
Contract	7,131	8,891	8,565	9,950
Non Contract	8,314	8,518	10,435	12,050
TOTAL	15,445	17,409	19,000	22,000

* Estimates

Substance Abuse Treatment Services

The primary services provided to offenders under community supervision include urine collection and analysis, counseling, detoxification, and residential treatment. According to the most recent figures, the total breakdown of expenditures by the major services used was:

Percent	
24	urinalysis
43	counseling
21	residential treatment
7	psychological services
2	vocational services
3	other treatment services

The figure for urinalysis represents two separate costs; the cost for collection of the specimens performed by contract agencies and the costs associated with laboratory analysis of specimens. The Administrative Office has a national contract with a laboratory in order to provide reliable test results to the Federal courts. An extensive monitoring system is in operation in which a noted authority on urinalysis procedures provides approximately 1,300 blind test specimens to the laboratory during the year in order to monitor proficiency. This aspect of the program is critical when laboratory results are challenged in court.

The costs of laboratory urinalysis have been increasing. In 1987, the average cost per specimen was $5.42 with national laboratory costs totalling over $1.6 million. In 1988, the per specimen rate cost an average of $6.00 with total expenditures of $2.1 million. In 1989, the average specimen rate increased to $9.00 because improved test methodologies were instituted which are more expensive. The expenditures for 1989 totalled approximately $3 million. Increased expenditures in urinalysis are also reflective of increased testing by the probation field offices.

Urine Specimens Collected

1986:	230,000
1987:	296,000
1988:	360,000

The average unit cost for the most frequently used services during 1989 were:

Urine collection:	$5.00 per specimen
Counseling - individual:	$25.00 per 30 minutes
Counseling - group:	$15.00 per 30 minutes
Psychotherapy - individual:	$34.00 per 30 minutes
Psychotherapy - group:	$18.00 per 30 minutes
Detoxification:	$183.00 per day
Residential Treatment: (short term)	$55.00 per day
Therapeutic Community: (long term)	$28.00 per day

Item 15b. Mental Health Treatment Program ($1,125,000)

18 U.S.C. Section 3672, as amended by the Sentencing Act of 1987, expanded the authority of the Director to contract for psychiatric aftercare services. The funds requested will provide for psychiatric evaluations and outpatient programs, individual or group therapy and services of a social worker or psychologist. It is estimated that approximately 1,000 individuals (exclusive of persons receiving drug or alcohol treatment) will require contract psychiatric aftercare services at a cost of $1,500 per person. The base amount is currently $375,000. The psychiatric treatment discussed immediately above also includes treatment from psychologists and counseling by social workers. Actual psychiatric treatment will normally only involve one interview, with the balance of the treatment being provided by the other two disciplines. Thus, the $1,500 estimate is based on charges for all three disciplines, with major service being provided by social workers. Treatment often depends upon what is available in a community and this is handled through 480 contracts in the U.S. and involves approximately 13,000 people.

Item 15c. Contractual Support for Pretrial Services ($4,250,000)

The sum of $4,250,000 is required in addition to the $5,000,000 currently available.

Public Law 97-267 provides for contractual services for the custody and/or care of persons released into the pretrial services program. Services include residential halfway houses, addict and alcoholic treatment centers, and counseling. Public Law 97-267 provides for contractual services for the custody and/or care of persons released into the pre-trial services program. Services include residential halfway houses, addict and alcoholic treatment centers, and counseling. When a newly arrested individual in need of alcohol or drug treatment, appears before a magistrate, or judge, he or she is, in certain circumstances, ordered to the pretrial treatment program. At times -- and increasingly as the program becomes more widely used by judicial officers -- the subject is required to wear an electronic monitor. Magistrates are being encouraged to use pretrial treatment as an alternative to incarceration. Pretrial treatment saves jail time costs because it reduces jail usage, an important factor because of the crowded conditions extant in so many of the nation's jails. Pretrial services cost the Judiciary more, but it lessens the cost for the Marshals Service and the Department of Justice, reduces unnecessary detention and failure to appear and reduces crime on bail, thus reducing costs for the general government. If the pretrial program is successful for a particular subject, the court may, on the basis of the treatment record, order probation rather than incarceration at the sentencing juncture. This will, again, be a direct cost to the Judiciary and a saving to other agencies of the government.

Item 15d. Contractual Support for Student Pretrial Services ($1,195,000)

This provides for the necessary wages, space, equipment, and clerical support to expand the student pretrial services pilot project nationwide as approved by the Judicial Conference Committee on Criminal Law and Probation Administration. The program consists of utilizing law and criminal justice students to perform limited pretrial services functions such as preparing reports and attending court hearings. The annual cost of this program is $1,600,000 and there is $405,000 in the base for this purpose. Students are used on a limited basis under professional supervision. Some are junior year, but most are senior and graduate level students. They can be used to obtain arrest and conviction records and other similar tasks, which saves the time of more experienced professionals. They are also used more intensively in the simpler cases.

Item 15e. Contractual Support for Electronic Monitoring ($3,650,000)

With passage of the Anti-Drug Abuse Act of 1988 which permits home detention or confinement as a condition of supervision in lieu of imprisonment, and the recent U.S. Sentencing Commission amendments introducing the same concept of "home confinement" augmented by electronic monitoring, significant contractual support services in the amount of $3,650,000 will be needed for the first time. Of the 2,000 persons in home confinement by 1991, it is expected that at least 1,000 persons will benefit from electronic monitoring. Experience in two pilot district programs presently underway, indicates an approximate per day cost of $10 for each case.

Item 16. Child Care Centers ($1,125,000)

The sum of $1,125,000 is requested to support the establishment and operation of child day care centers in Federal work places housing court facilities. Statutory authority exists for interested agencies to utilize appropriated funds to pay for the space dedicated to the centers and the cost of the equipment, supplies, furniture, utilities, and overhead. Appropriated funds may not be used however to pay for the professional management services required by the facility. Such services will be funded based on a assessment charged to the parents who use the centers. Currently three districts, the Eastern and Western Districts of Pennsylvania and the District of Nebraska, have expressed an interest in establishing child day care centers. Our estimate assumes that during FY 1991, approximately 50 day care centers will be available for use by Federal court employees nationwide at a start up cost of $30,000 per center. There is currently, $375,000 in the base appropriation for this purpose.

Item 17. Payments for Court Appointed Counsel to Prosecute Contempt Cases ($75,000)

The sum of $75,000 is requested to compensate private counsel who are appointed by the court to prosecute criminal contempt cases. The majority of criminal contempt proceedings are brought by attorneys for the Department of Justice at the request of the court. However, on those occasions where Department of Justice attorneys are unavailable, due to conflict of interest or otherwise, and because the Department of Justice has determined that their agency's appropriation statute forbids such reimbursement to private counsel, we must look to the Judiciary's general appropriations to fund these costs. There is currently $25,000 in the base for this purpose.

Item 18a. Expansion of Automated Systems ($14,478,000)

Data Processing

Introduction

Under the guidance of the Judicial Conference, automation efforts within the Judiciary are continuing with implementation of computer systems that provide comprehensive support in such areas as: electronic docketing; noticing; indexing; administrative support; and case, jury, and financial management. In addition to providing up-to-date decentralized computer technology within the courts, these systems also serve as a replacement for existing centralized Courtran systems that have been operating since 1976.

The Courtran computers which consist of four large mainframe computers centrally located in Washington, D.C., support the operation of hundreds of terminals located in courts throughout the country. Over the past 14 years, these Courtran computers have become obsolete, overloaded, and very expensive to maintain. One of the key elements of the automation plan and a continuing high priority is to completely phase-out these Courtran computers by late fiscal year 1991.

During fiscal year 1988, the Administrative Office procured and installed computer systems in the courts; developed and converted application systems for operation within the courts; accepted computer systems developed by the Federal Judicial Center for distribution to the courts; and provided technical support to an increasingly large number of court systems. The major emphasis during fiscal year 1989 was on the implementation of application systems in the courts. This focus will continue during fiscal year 1990 and fiscal year 1991.

Since current plans call for off-loading all Courtran operations by late in fiscal year 1991, no increase in the Courtran requirement during 1991 is anticipated.

With the completion of computer system development, the focus in the District Court Automation Project (DCAP) has shifted to implementing systems in the small, medium, and large courts in fiscal years 1989 and beyond. Automation costs for DCAP will include the costs of purchasing new computer systems and upgrading existing systems for full docketing, financial systems, and public access; preparing sites for installation of the equipment; and purchasing and installing data communications equipment and services to support additional locations and is estimated to cost $19,513,000, an increase of $4,139,000 over fiscal year 1990 expenditures.

The Appellate Information Management System (New AIMS) will not experience an increase in required funds for 1991. Expenditures will continue at the level of $1,210,000 as in fiscal year 1990.

Funds associated with the Central District of California and District of Columbia Financial Systems will no longer be necessary starting in fiscal year 1991 for a savings of $96,000. These courts will have converted their operations to one of the UNIX-based systems planned for those sites.

The Computer-Assisted Legal Research (CALR) program will continue to provide services to judicial officers and supporting personnel during fiscal year 1991 commensurate with the delivery of the new automation equipment. New CALR contracts will also be negotiated for fiscal year 1991 and beyond. No increase above the $2,20,000 planned for fiscal year 1990 is anticipated.

The Circuit Libraries Automation Systems (CLAS) will require an expenditure in fiscal year 1991 of $500,000, to cover the costs of system development, implementation, and operation of automated library services and functions for the twelve circuit libraries and to incrementally expand the automated library services into the 80 satellite libraries over a three-year period.

A total of $650,000 is required during FY 1991 for access to law enforcement systems at the national, state, and local level. This service is provided to probation and pretrial services offices through the National Law Enforcement Telecommunications System (NLETS). No increase over 1990 is requested.

Automated Jury Selection provides for data processing services related to the maintenance of juror lists in district courts. A total of $900,000 in funding is required in fiscal year 1991 in order to cover the necessary costs associated with processing the two-year cycle. No increase over 1990.

Probation Support provides data processing services to probation offices as well as access to the district court criminal systems. In fiscal year 1991, an increase of $2,000,000 in addition to the $1,887,00 planned for expenditure in fiscal year 1990 will be required to purchase and install approximately 20 systems for the probation offices, to upgrade existing district court computers to provide the capacity to support probation access to criminal information, to provide for necessary site modifications, and to acquire and install data communications facilities.

Costs associated with the implementation of the Bankruptcy Court Automation Project (BANCAP) will continue to rise during 1991, to a total of $15,707,000, an increase of $3,076,000 over 1990. The planned rate of expansion during 1991 is for the purchase and installation of three large, ten medium, and eight small computers; the purchase and installation of twenty systems for public access; carrying out necessary site modifications; and the purchase and installation of data communications network equipment and services to support new installations or leased lines and intra-building wiring, as necessary.

BANCAP Notice Printing will increase $1,000,000 over the fiscal year 1990 cost to a total amount of $1,413,000.

The Bankruptcy Noticing System (BANS) will continue to provide noticing services to those 16 courts currently using the system. Once the BANCAP Noticing System is in place, this operation will be gradually phased out. No increase over projected costs of $1,456,000 for fiscal year 1990.

The ICMS Maintenance Project consists of maintaining, supporting, and enhancing the Integrated Case Management Systems (ICMS) software which is at the core of the Civil/Criminal, BANCAP, and New AIMS applications. Fiscal year 1991 expenditures are planned at $1,600,000, the same level as fiscal year 1990.

Office Automation

The purpose of this program is to provide proven cost effective office automation equipment, including word processing and electronic mail, to all personnel within judges' and magistrates' chambers and to those support offices engaged in work activities not addressed by the various data processing projects discussed above. The Judicial Conference has accelerated the planned installation of these systems over a span of three years, rather than the originally contemplated five years, in an effort to provide the Judiciary with capabilities on a par with other government agencies and private law firms litigating cases before the court. This program resulted in a contract for the purchase, installation, and maintenance of office automation equipment in these chambers and offices over a three-year period beginning in late 1989. Training is also included under the terms of the contract.

In fiscal year 1991, continued funding at the level of fiscal year 1990 will be necessary for the purchase and installation of personal computer workstations and associated software and equipment for judicial officers, law clerks, and secretaries; for the purchase and installation of workstations plus ancillary computer software and equipment, training, and other services for circuit support offices including circuit executives, clerks of court and staff attorneys; to provide funding for the purchase and installation of ancillary computer software and equipment, training and other services in district and bankruptcy court support offices such as district executives, clerks of court, chief probation officers, chief pretrial services officers, probation officers, and estate administrators.

No additional funds over the fiscal year 1990 expenditures of $20,043,000 is requested for fiscal year 1991.

Data Telecommunications

During 1986, the Administrative Office contracted with American Management Systems, Inc., to develop a Five-Year Plan for Data Communications in the U.S. Courts. The objective of the plan is to provide a strategy for the acquisition and implementation of data telecommunications equipment and services to support data processing and office automation initiatives in the Judiciary.

The Five-Year Plan for Data Communications calls for the awarding of a telecommunications contract to provide data communications components which can be integrated into a standard communications environment for the Judiciary. The primary goals of the data communications project are: (1) acquire/develop a mechanism for managing an on-going activity in the most cost effective manner possible; and (2) provide those persons in each court building with a mechanism for communicating with those locations, both internal and external to the Judiciary, necessary for the court to conduct business in an automated environment. The total amount necessary to meet the above objectives is $3,859,000. The resulting communication capability on an individual court basis, includes chambers access to the UNIX computers, access to computer aided legal research (CALR) in a cost effective and standardized manner, and communications with divisional offices at a level in which each person (as appropriate) will have the same capabilities as those individuals residing at the headquarters location. At the circuit court level, this capability also includes intra-circuit electronic mail for opinion circulation. In addition, these components will become part of a total network environment where communications among individual courts and the Administrative Office will be possible. The major mechanism for this capability will be electronic mail utilizing, in most cases, those network components which already exist as part of the individual courts' internal communications environment.

In 1987, the Administrative Office contracted with the MITRE Corporation for the development of the formal data communications systems program plan. The MITRE Corporation was primarily responsible for developing the detailed specification for a request for proposal which formally defined the specific communications requirements of the Judiciary. This RFP was released to industry as a formal solicitation document requesting industry to provide the best and most cost effective solution to the Judiciary's communication requirements. It is anticipated that a contract award will be made during fiscal year 1990 and that MITRE will continue in a monitoring capacity as implementation takes place.

In fiscal year 1991, the sum of $9,707,000 will be required to support the Judiciary's data telecommunication services. This represents an increase of $3,859,000 above the amount needed in fiscal year 1990.

Item 18b. Court Automation Support (48 reimbursable positions, $1,755,000)

All automation support costs of the courts are being transferred to the "Salaries and Expenses" appropriation. Accordingly, program increases for court automation support will now be included in this appropriation.

The Committee on Judicial Improvements of the Judicial Conference has directed the Administrative Office to seek from the Congress the resources needed to ensure the successful implementation of the Long-Range Plan for Automation in the United States Courts. An intensive review of our present workload, coupled with a detailed examination of what is planned through fiscal year 1991, has revealed the need for an addi-tional 31 positions if the 1991 automation commitments to the Federal judiciary, as contained in the Long-Range Plan, are to be met. The amount of $1,755,000 is requested in order to cover the cost of these 31 positions. Following is a detailed description of the functions to be performed by the additional automation support positions.

Automated Support Positions

Data Processing:

Twelve additional computer programmer/analysts are requested for the Court Systems Division (CSD). These positions will be directed at the needs of district courts' case management applications including conducting studies, doing evaluations of court requests, designing and developing software components, organizing software training courses, and performing software maintenance. They will also provide user software support, documentation in the form of user training manuals, extensive system testing, on-site software training and data conversion functions.

Three computer programmer/analysts are requested for the CSD who will be responsible for visiting Probation and Pretrial Services offices to conduct and implement system studies, to evaluate system effectiveness, and to conduct on-site user software training. They will examine efforts required to automate selected work functions in terms of cost effectiveness, resource availability, and the impact on users. Incumbents will also participate in determining the processes to be automated, in the design and development of computer systems and the final measurement and acceptance of the systems.

Three additional computer programmer/analysts are requested for the CSD to supply the support needed for the expanding Bankruptcy Computer Automation Program. These incumbents will visit bankruptcy courts to analyze court function paper-flow, to integrate and implement BANCAP and related systems, to evaluate system effectiveness and conduct advanced system administrator and user training. They will examine efforts required to automate selected work functions and their cost effectiveness, resource availability, and impact on users. They will participate in the determination of additional processes to be automated, in designing and developing computer systems, and in the process of the final measuring and acceptance of the system.

One more computer programmer/analyst is requested to meet the needs of the Systems Engineering Branch in the Systems Technology Division (STD). The incumbent will respond to requests for information about the operating system software, provide and repair software, create new software features and design new operation system support tools. The incumbent will rewrite existing software to keep up with changes in the environment, document the operation of existing and new software, assist system administrators in learning the software and resolve any complaints regarding its inadequate performance.

One computer equipment analyst is requested for the STD. This incumbent will perform site surveys, ensure proper site preparation, prepare for actual installation of UNIX computers in the courts, and provide higher level technical support for hardware and communications. Duties will include the review and evaluation of bi-weekly court site reports during the site preparation process, maintenance of technical files concerning each court and the provision of installation support by coordinating with vendors for delivery and installation. The incumbent will teach the court's system administrator and at least one other member of the court's staff how to complete wiring installation of equipment in order to obviate the need for return visits for all but the most difficult problems. Provision of technical support for periods of several months will also be a duty, as the sizes and configurations of equipment vary with the needs of the courts. This position will also provide high level technical support for installed UNIX systems and will handle the high volume of hardware trouble calls as systems are initiated.

Data Communications:

Six project manager positions are requested for the Integrated Technology Division (ITD) to staff data communications project management positions which will have three major categories of responsibility. These are (1) policy and planning; (2) contract administration, and (3) operational support. The policy and planning aspect includes participation in the budget development and forecast process with regard to specification, acquisition, pilot testing, and implementation of the data network. The contract administration function will furnish the contracting officers technical representative for the data communications contract, develop operating budgets for the project, establish spending plans for the contract and prepare plans for implementation of network equipment acquisition and services. Operational support will encompass providing the principal contact point for all court and AO elements needing assistance concerning the data network operations. Additionally, these incumbents will perform needs analysis, conduct feasibility studies and identify needs and problems related to the delivery and operation of equipment and services available from the data communications contract. Operational support will also manage the technical configuration of the installed base of data communications equipment, analyze operational records and maintain contact with users to determine the efficiency and effectiveness of contracted equipment, and will conduct audits of the technical aspects of contractor performance.

Management and Administration:

Two positions are required to serve as branch chiefs to the Chief, Systems Technology Division (STD). The branch chiefs will be the focal point for providing technical support for the delivery of information services/resources to the courts. The scope of this activity includes specialized areas such as standards, computer security, quality control, internal support, and the technical aspects of systems engineering and operating systems support.

Two management analysts are requested for the Office of Automation and Technology (OAT) who will be involved in policy, procedures, and planning activities for the division. These incumbents will participate in budget development and forecast processes, including developing and recommending budget criteria, and policies and procedures for allocation of financial resources and the development of the long range plan and the tactical plan for automation in the judiciary. These incumbents will also identify, document, and recommend changes in division procedures, systems, and methods and/or office equipment which will improve the overall efficiency and effectiveness of the division;

they will develop policy recommendations and implement such policies once approved; they will develop procedures and guidelines for the division to follow in implementing the long range and tactical plans; and they will serve as project leaders of ad hoc groups dealing in the evaluation of procedures and systems to develop more systematic approaches to automation practices in the court.

One position is requested to efficiently handle the clerical, secretarial, and administrative duties associated with over 200 full time, professional personnel many of whom will be in a travel status, frequently.

Authority is also requested to fill 12 ICMS and 5 PACTS positions to be funded out of Judiciary automation funds.

Item 18c. Training Positions (35 positions, $500,000)

Automation training centers have been established in the Western District of Texas and Arizona to assist other district courts in implementing the full docketing case management system now being installed in the district courts. The training centers, presently staffed with 16 automation and computer specialists (6 in Texas (W) and 10 in Arizona) obtained from the pool of deputy clerk positions available, will require a total of 37 positions by 1991 to handle the number of district courts which are expected to have the civil and criminal case management systems installed by that time.

In addition to providing automation support in the implementation of district court full docketing automated systems, the Western District of Texas also provides automation support to assist other bankruptcy courts in implementing the BANCAP full docketing case management system now being installed in the bankruptcy courts. This BANCAP training center, presently staffed with 15 automation and computer specialists taken from the number of deputy clerk positions available, will require an additional 14 positions for total of 29 positions in 1991. The total request of 35 positions and $500,000 includes three months funding of $335,000 for salaries and benefits and $165,000 for operating expenses.

JUDICIARY AUTOMATION COSTS, Fiscal Years 1990 to 1993
($000)

Activity/Project	1990 Base Amount	1991 Increase Over 1990 Base	1991 Total Amount	1992 Total Amount	1993 Total Amount
Data Processing					
Courtran	$ 967	$ 0	$ 967	$ 460	$ 10
District Court Automation Project (DCAP)	15,374	4,139	19,513	16,290	16,290
Appellate Information Management System (New AIMS)	1,210	0	1,210	1,571	1,571
LA/DC Financial Management System	96	-96	0	0	0
Computer Assisted Legal Research (CALR)	2,200	0	2,200	3,500	3,500
Circuit Libraries Automation System	0	500	500	500	500
Access to Law Enforcement	650	0	650	650	650
Automated Jury Selection	900	0	900	900	900
Probation Support (PACTS)	1,887	2,000	3,887	8,861	8,861
Bankruptcy Court Automation Project (BANCAP)	12,631	3,076	15,707	19,713	8,500
BANCAP Notice Printing	413	1,000	1,413	4,100	4,500
Bankruptcy Automated Noticing System (BANS)	1,456	0	1,456	687	250
Financial/Administrative System	300	0	300	0	0
ICMS Maintenance	1,600	0	1,600	1,600	1,600
Operating Systems Support	0	0	0	0	0
Systems Administration Training & Support	150	0	150	1,150	200
Operations & Installation	0	0	0	0	0
User Support	150	0	150	150	150
PC Maintenance & Support	4,900	0	4,900	5,390	5,929
Tenant Alterations & Overtime Utilities	600	0	600	660	726
Subtotal	45,485	10,619	56,104	66,182	54,137
Office Automation					
Office Automation Support (Judges' Chambers)	8,104	0	8,104	13,110	6,839
Office Automation Support (Circuit Support Offices)	2,384	0	2,384	1,236	773
Office Automation Support (District/Bankruptcy Support Offices)	4,100	0	4,100	6,349	1,567
Office Automation Support (Support Ofcs., Sec/Clerical)	3,530	0	3,530	7,435	1,856
Other Office Equipment	1,925	0	1,925	925	925
Subtotal	20,043	0	20,043	29,055	11,960

Activity/Project	1990 Base Amount	1991 Increase Over 1990 Base	1991 Total Amount	1992 Total Amount	1993 Total Amount
Data Telecommunications					
Data Communications Services	1,000	-200	800	700	300
Leased Lines	843	261	1,104	1,104	1,314
Contractual Services	73	0	73	73	73
Data Communications Network (Specification/Acquisition/Pilot Test)	2,423	-1,880	543	627	627
Data Communications Network (Circuit Ct. Electronic Mail	0	5,421	5,421	2,003	2,003
Systems Engineering/Contract Monitoring	1,509	257	1,766	1,641	1,805
Subtotal	5,848	3,859	9,707	6,148	6,122
Total	$71,376	$14,478	$ 85,854	$101,385	$72,219
INCREASE OVER FY90 BASE			$ 14,478	$ 30,009	$ 843

NOTE: The 1990 base does not include sequestered funds ($5,500) that are being requested in 1991.

Fiscal Years 1990 - 1993 Budget Request
COURT AUTOMATION SUPPORT COSTS
($000)

Activity/Project	1990 Base Perm. Pos.	1990 Base Amount	1991 Increase Perm. Pos.	1991 Increase Amount
Data Processing				
Courtran	5.25	$ 219	0	$ 0
District Court Applications Project (DCAP)	15.75	657	12	678
Appellate Information Management System (New AIMS)	6	250	0	0
LA/DC Financial Management System	0	0	0	0
Computer Assisted Legal Research (CALR)	0	0	0	0
Circuit Libraries Automation System	0	0	0	0
Access to Law Enforcement	0	0	0	0
Automated Jury Selection	0	0	0	0
Probation Support (PACTS)	1	42	3	170
Bankruptcy Court Automation Project (BANCAP)	10	417	3	170
BANCAP Notice Printing	1	42	0	0
Bankruptcy Automated Noticing System (BANS)	4	167	0	0
Financial/Administrative System	7	292	0	0
ICMS Maintenance/Reengineering	0	0	0	0
Operating Systems Support	16	667	1	57
Systems Administration Training & Support	9	375	0	0
Operations & Installation	13	542	1	57
User Support	12	500	0	0
Subtotal	100	4,170	20	1,130
Office Automation				
Office Automation Support (Judges' Chambers)	2	83	0	0
Office Automation Support (Circuit Support Offices)	2	83	0	0
Office Automation Support (District/Bankruptcy Support Offices)	2	83	0	0
Office Automation Support (Support Offices, Secretarial, Clerical)	2	83	0	0
Subtotal	8	332	0	0

Activity/Project	FY90 Bas Perm. Pos.	FY90 Bas Amount	FY91 Increase Perm. Pos.	FY91 Increase Amount
Data Telecommunications				
Data Communications Service	0	0	.5	28
Leased Lines	0	0	.5	28
Contractual Services	0	0	.5	28
Data Communications Network (Specification/Acquisition/Pilot Test)	5	209	1	57
Data Communications Network (Circuit Ct. Electronic Mail	3	125	.5	28
Systems Engineering/Contract Monitoring	0	0	3	170
Subtotal	8	334	6	339
Management & Administration				
Management	20	836	2	113
Administration	2	83	0	0
Clerical	8	334	1	57
Project Management and Planning, Budgeting & Procurement	18	751	2	113
Subtotal	48	2,004	5	283
Total	164	$6,840	31	$1,752[1] $1,755 round

[1] Excludes Fine Center personnel. Authority is also requested to fill 12 ICMS and 5 PACTS positions funded out of the Judiciary Automation Fund.

Item 19. Contractual Financial Audits ($300,000)

Administrative officers of the courts, especially clerks of court who are the liable officers of the court, have shown increasing interest in undergoing more frequent audits. New clerks and clerks with new financial deputies are more frequently requesting follow-up audits upon a change in personnel in those positions. The Administrative Office Audit Branch currently conducts audits on a four to five year cycle. For purposes of maintaining a satisfactory level of risk analysis for internal controls, the courts should be surveyed or audited at least every 2.5 years. The funds requested, in addition to the $250,000 in the base appropriation, will provide for additional audits to be conducted by contract auditors at a rate which will ensure that an auditor from a CPA firm will visit each court at least once every five years, thus alternating audit visits with the auditors from the Administrative Office every two-and-a-half years.

Item 20. Operational Training ($600,000)

Funds are requested to train court personnel in those specific areas not covered by the Federal Judicial Center training programs but which are critical to the administration of the courts. The needs have also been growing rapidly in recent years due to the continued dramatic growth in the courts as well as due to the need for the Administrative Office to decentralize more and more of these functions to the courts. Training is required especially in the areas of contracting and contract monitoring, procurement, voucher examination, accounting, and operating word processors and personal computers. Court personnel are traditionally experienced in the management of court records, however, since the courts have been authorized increasingly larger funding allocations, more and more procurement authority and have become automated, their training requirements in fundamental administrative functions and in the use of sophisticated electronic office equipment have become critical. The annual cost of this program is $800,000, of which $200,000 is in the base appropriation.

Resources for Violent Crime and Drug Initiatives

In 1990 the Department of Justice received funding for an additional 800 U.S. Attorney positions. It is expected that these additions will impact the Judiciary in the latter part of fiscal year 1991. An additional 4,800 criminal cases are expected and additional pre- and post-sentence, collateral, and violation reports will create a need for additional funding for Probation, Pretrial and Clerks' offices. The requests for additional resources are shown below.

Item 21. Deputy Clerks (33 positions and $290,000 for three months)

To process the additional 4,800 criminal cases, an additional $290,000 for 33 positions for three months is requested. The amount requested includes $125,000 for salaries and benefits for three months and $165,000 for operating expenses.

Item 22. Probation/Pretrial (260 positions for three months and $3,702,000)

An additional $3,702,000 is requested to prepare pre- and post-sentence, collateral and violation reports for the additional 4,800 criminal cases (8,800 defendants). The amount requested includes $2,222,000 for salaries and expenses for three months and $1,480,.000 for operating expenses.

Object Classification by Program Activity
(In thousands of dollars)

Salaries of Judges

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$125,419	$166,639	$+41,220
12	Personnel benefits	10,912	16,932	+ 6,020
	Total direct obligations	$136,331	$183,571	$+47,240

Salaries of Supporting Personnel

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$579,016	$668,146	$+ 89,130
12	Personnel benefits	135,463	155,033	+ 19,570
13	Benefits for former personnel	200	200	.....
	Total direct obligations	$714,679	$823,379	$+108,700

Expenses of Operation and Maintenance of the Courts

		1990 Estimate	1991 Estimate	Difference (+) or (-)
12	Personnel benefits	$ 978	$ 1,018	$+ 40
21	Travel and transportation of persons	21,636	23,636	+ 2,000
22	Transportation of things	1,989	2,089	+ 100
23	Communications, utilities, and miscellaneous charges	57,941	60,241	+ 2,300
24	Printing and reproduction	7,616	8,266	+ 650
25	Other services	65,706	91,478	+ 25,772
26	Supplies and materials	15,055	17,455	+ 2,400
31	Equipment	96,386	107,593	+ 11,207
42	Insurance claims and indemnities	20	20	.....
	Total direct obligations	267,327	311,796	+ 44,469

Space and Facilities

		1990 Estimate	1991 Estimate	Difference (+) or (-)
23	Rental payments to GSA	$239,736	$267,799	$+28,063
	Rental payments to others	773	806	+ 33
	Communications, utilities and miscellaneous charges	2,725	3,040	+ 315
25	Repairs and alterations	5,244	47,894	+42,650
31	Equipment	1,275	1,315	+ 40
	Total direct obligations	$249,753	$320,854	$+71,101

Court Automation Support

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$4,150	$6,150	$+2,000
12	Personnel benefits	900	1,440	+ 540
21	Travel and transportation of persons	350	550	+ 200
23	Rental payments to GSA	595	795	+ 200
	Communications, utilities, and miscellaneous charges	50	350	+ 300
25	Other services	100	145	+ 45
26	Supplies and materials	195	195	+ ...
31	Equipment	500	1,395	+ 895
	Total direct obligations	$6,840	$11,020	$+4,180

Summary of Additional Supporting Personnel Positions Requested
(Dollar amounts in thousands)

	1990 Estimate		Adjustments to Base		Resources for Workload Increases and Other Changes		1991 Estimate	
	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Personnel Compensation and Benefits:								
Claims Court	60	$ 2,252	...	$ 364	...	$ ...	60	$ 2,616
Magistrates' offices:								
Magistrates	307	34,389	(307)	(34,389)	...	...	...	.....
Staff	633	24,101	...	3,837	67	2,075	700	30,013
Circuit executives' offices	89	5,563	...	539	1	56	90	6,158
Clerks' offices	9,773	276,249	...	59,240	956	6,680	10,729	342,169
Probation offices	4,705	157,758	...	28,520	707	6,509	5,412	192,787
Pretrial offices	461	17,514	...	2,794	11	101	472	20,409
Judges' staffs	3,811	147,208	18	24,096	...	275	3,829	171,579
Court reporters	596	27,375	2	3,613	...	...	598	30,988
Central legal staffs	248	9,944	...	1,503	37	289	285	11,736
Librarians	236	7,346	...	1,431	28	240	264	9,017
Other personnel	153	4,980	...	927	...	...	153	5,907
Total	21,072	$714,679	(287)	$92,475	1,807	$16,225	22,592	$823,379

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

DEFENDER SERVICES

Summary of Requirements

Appropriation 1990 (enacted to date)	
Sequestered pursuant to P.L. 99-177 and P. L. 101-239	$128,060,000
	- 1,599,000
Budget Authority, 1991	126,461,000
1991 budget estimate	167,580,000
Proposed Increase	41,119,000

Appropriation Language

DEFENDER SERVICES

For the operation of Federal Public Defender and Community Defender organizations, the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964, as amended, the compensation and reimbursement of expenses of persons furnishing investigative, expert and other services under the Criminal Justice Act (18 U.S.C. 3006A(e)), [and] the compensation of attorneys appointed to represent jurors in civil actions for the protection of their employment as authorized by 28 U.S.C. 1875(d), [$86,687,000, and the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel,] and the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfers from the United States to foreign countries with which the United States has a treaty for the execution of penal sentences to remain available until expended as authorized by 18 U.S.C. 3006A(i).

the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel,

$ 167,580,000,

DEFENDER SERVICES
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.			1991 Request Perm. Pos.	Amount
		Summary of Changes:		
		Appropriation 1990 (enacted to date)	764	$128,060
		Sequestered pursuant to P.L. 99-177	...	- 1,599
		Budget Authority, 1990	764	$126,461
		Adjustments to base and built-in changes:		
6.18	1.	Restoration of amount sequestered to appropriation base resulting from the Balanced Budget and Emergency Deficit Control Act of 1985	...	+ 1,599
6.18	2.	Federal Defender organizations:		
6.18		a. Additional funding required to restore base appropriation	...	+ 22,000
6.18		b. Fiscal year 1990 increase for pay costs	...	+ 1,613
6.18		c. Fiscal year 1991 increase for pay costs	...	+ 825
6.18		d. Additional workload and increased costs of operation	...	+ 2,042
6.19	3.	Panel Attorney Representation:		
6.19		a. Liquidation of panel attorney appointments made in fiscal year 1991 and prior years	...	+ 10,240
6.23	4.	Increased cost of transcripts due to workload	...	+ 500
		Subtotal	...	+ 38,819
		Resources for improvements in services:		
6.24	5.	Death Penalty Resource Centers	...	+ 2,000
6.27	6.	Continuing education and training of panel attorneys and federal defenders	...	+ 300
		Subtotal	...	+ 2,300
		Total increases requested	...	+ 41,119
		Total appropriation requested, 1991	764	$167,580

DEFENDER SERVICES

Obligations by Activity

(Dollar amounts in thousands)

Authorization: Permanent

Comparison by activities:	1990 Appropriation Perm. Pos.	1990 Appropriation Amount	1990 Adjusted (Base for 1991) Perm. Pos.	1990 Adjusted (Base for 1991) Amount	1991 Request Perm. Pos.	1991 Request Amount	Increase 1991 over 1990 as Adjusted Perm. Pos.	Increase 1991 over 1990 as Adjusted Amount
Federal Public Defenders.	764	$40,454	764	$ 43,760	764	$ 43,760	...	$+ ...
Comm. Def. Org. (grants).	...	19,447	...	22,220	...	24,220	...	+ 2,000
Panel attorneys..........	...	83,060	...	93,300	...	93,300	...	+ ...
Transcripts..............	...	5,000	...	5,500	...	5,500	...	+ ...
General admin. expense...	...	500	...	500	...	800	...	+ 300
Total obligations...	764	$148,461	764	$165,280	764	$167,580	...	$+ 2,300
Unobligated balance, start of year..........	...	-22,000	...	.....	...	.....	...	...
Unobligated balance, end of year............	...	.....	...	.....	...	.....	...	...
Budget Authority....	764	$126,461	764	$165,280	764	$167,580	...	$+ 2,300

Object Classification

(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation.	$25,174	$27,579	$+ 2,405
12	Personnel benefits.	5,957	6,581	+ 624
21	Travel and transportation of persons.	1,080	1,364	+ 284
22	Transportation of things.	31	34	+ 3
23	Rental payments to GSA.	3,403	3,775	+ 372
	Communications, utilities, and miscellaneous charges.	1,177	1,254	+ 77
24	Printing and reproduction	53	60	+ 7
25	Other services:			
	Compensation and out-of-pocket expenses of court-appointed counsel.	78,312	88,211	+ 9,899
	Transcripts	5,000	5,500	+ 500
	Investigators, interpreters, psychiatrists, and other experts .	5,525	5,955	+ 430
	Other	1,346	1,502	+ 156
26	Supplies and materials.	250	305	+ 55
31	Equipment	1,706	1,240	- 466
41	Grants.	19,447	24,220	+ 4,773
	Total obligations	$148,461	$167,580	$+19,119

Relation of Obligations to Outlays

(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$148,461	$167,580	$+19,179
Obligated balance, start of year.	1,823	3,539	+ 1,716
Obligated balance, end of year.	- 3,539	- 4,692	- 1,153
Outlays	$146,745	$166,427	$+19,742

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Direct:			
Total number of full-time permanent positions	764	764	...
Total compensable workyears:			
Full-time equivalent employment	594	673	+79

General Statement

The Defender Services Appropriation is for the administration and operation of the Criminal Justice Act of 1964 (18 U.S.C. 3006A), as amended. The purpose of the Act is to provide effective representation for those persons with limited financial resources. It provides for the furnishing of representation for any person financially unable to obtain adequate representation in federal criminal and certain related proceedings and includes counsel and investigative, expert, and other services. The appropriation also includes funding for the compensation, training and expenses of court-appointed counsel and persons providing supporting services, as well as for the operation of Federal Defender organizations. In addition, the appropriation includes funding for the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of minors or incompetent offenders in proceedings in connection with prisoner transfer under 18 U.S.C. 4109.

Representation is furnished for any person financially unable to obtain adequate representation: (1) who is charged with a felony or a Class A misdemeanor, juvenile delinquency, or violation of probation; (2) who is under arrest, when such representation is required by law; (3) who faces modification or revocation of a term of supervised release; (4) whose mental condition is the subject of a hearing pursuant to chapter 313 of title 18, United States Code; (5) who is in custody as a material witness; (6) who is entitled to the appointment of counsel in prisoner transfer proceedings under 18 U.S.C. 4109; and (7) for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which a defendant faces loss of liberty, any federal law requires the appointment of counsel. The latter encompasses persons who are entitled to the appointment of one or more counsel pursuant to 21 U.S.C. 848 (q)(4)(A) who are charged with a federal capital offense or are under a capital sentence and seeking relief pursuant to 28 U.S.C. 2254 or 2255. The Criminal Justice Act also provides that, when the court or the magistrate finds that it is in the interest of justice, representation may be provided to a person who, (1) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized, or (2) is seeking relief under 28 U.S.C. 2241, 2254, or 2255.1/

A plan for furnishing representation in the circumstances listed above is required for each

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1/ On November 1, 1987, section 223(e) of the Sentencing Reform Act of 1984 (Pub. L. 98-473, sections 211 through 239) as amended by section 103 of the Criminal Justice Act Revision of 1986 (Pub. L. 99-651) became effective. This provision changed the reference to "misdemeanor" in the Criminal Justice Act to "Class A misdemeanor," and the reference to "petty offense" to "Class B or C misdemeanor, or an infraction." In addition, it eliminated the provision relating to counsel for persons in parole proceedings under chapter 311 of title 18, United States Code. This latter amendment conforms to the November 1, 1987 repeal of chapter 311 by section 218(a)(5) of the Sentencing Reform Act of 1984. Nevertheless, the savings provisions, by section 235 of the Sentencing Reform Act, state that chapter 311 of title 18 and all laws pertaining to the provision of counsel will remain in effect for five years after the November 1, 1987 effective date, with respect to persons convicted of an offense or adjudicated to be a juvenile delinquent before the effective date and as to a term of imprisonment during the period specified in the savings provisions.

district court and must be approved by the judicial council of the circuit. Included in the plans must be a provision that for a substantial proportion of cases, representation is to be provided by private attorneys. In addition, the plans may provide for representation by attorneys furnished by a bar association, legal aid agency, or (for qualifying districts 2/) a Federal Public or Community Defender organization. Prior to approving the district court plan, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The Judicial Conference of the United States is authorized to issue rules and regulations governing the operation of the plans and require circuit and district courts to submit reports concerning the appointment of counsel within appropriate jurisdiction to the Administrative Office of the United States Courts.

In addition, this appropriation is available for the compensation of counsel (1) appointed pursuant to 5 U.S.C 3109 to assist the court in criminal cases where the defendant has waived representation by counsel; and (2) appointed pursuant to 28 U.S.C. 1875 to represent jurors in civil actions for the protection of their employment.

Payments from funds appropriated under this heading shall be made under the supervision of the Director of the Administrative Office of the United States Courts. References to basic statutory authorities are contained in the Digest of Appropriations, The Judiciary, on file with the Office of Management and Budget and the Appropriations Committees of the Congress.

Justification of Changes

The major determinants of the funding requirements for the Defender Services Appropriation are the number of appointments of counsel for representation under the Criminal Justice Act and the complexity of the cases in which those appointments are made. In turn, the number and complexity of criminal filings are affected both by the prosecutorial policies of the Department of Justice and the implementation of complex statutory schemes, such as the Sentencing Reform Act of 1984.

Number of Appointments of Counsel for Representation

Felony and misdemeanor appointments under the Criminal Justice Act have increased each fiscal year since 1980 and these annual increases are expected to continue. Appointments in fiscal year 1988 rose by 5.2 percent over the previous fiscal year and increased 6.8 percent in 1989. It is estimated that representations under the Criminal Justice Act in the circuit and district courts will increase from 76,689 in fiscal year 1990 to 80,820 in fiscal year 1991, an increase of 5.4 percent.

These increases in appointments chiefly are attributable to the growth in criminal filings which also have risen each fiscal year since 1980. In 1988, criminal filings were approximately 1.0 percent higher than in 1987 and approximately 3.2 higher in 1989 than 1988. The projected increases over the prior fiscal year in 1990 and 1991 are 5.2 and 4.1 percent, respectively.

Impact on the Number of Appointments

Prosecutorial Initiatives - Several prosecutorial initiatives, especially those efforts directed at anti-

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2/ Any district or part of a district, or two adjacent districts or parts of districts, whether or not in the same circuit, in which at least 200 appointments are required annually, may establish a Federal Defender organization.

drug activities, contribute to the number of criminal filings. Such prosecutorial initiatives include:

Operation Alliance

"Operation Alliance", begun July 1, 1986, is an effort to "seal" the border between the United States and Mexico, primarily from the inflow of illegal drugs. It is reputed to be the largest land border initiative in law enforcement history and federal agencies involved continue to project dramatic staff increases followed by an increase in drug prosecutions. Federal Defender organizations located in areas affected by Operation Alliance opened 2,641 drug cases in fiscal year 1989. This caseload compares with 1,636 cases opened in fiscal year 1987 and 2,439 cases opened in fiscal year 1988. Thus, the number of appointments in drug cases in fiscal year 1989 was 61.4 percent greater than in fiscal year 1987 and 8.3 percent greater than in fiscal year 1988.

Zero Tolerance Policy

The national "zero tolerance policy" is another example of an anti-drug program that continues to have a significant impact on the number of criminal filings and the number of Criminal Justice Act appointments. In the past, if an individual entered the country with a very small quantity of drugs, typically the contraband was seized and a fine of up to $1,000 was imposed. Under the zero tolerance policy, anyone with a measurable amount of drugs is charged and could be sentenced to both imprisonment and a term of probation supervision. Under the Anti-Drug Abuse Act of 1986, a first offender is subject to a $1,000 mandatory minimum fine for simple possession while a second offender is subject to a mandatory term of imprisonment.

Comprehensive Forfeiture Act

Along with the number of criminal filings, other factors are contributing to increases in the number of Criminal Justice Act appointments. For example, in addition to criminal prosecution, the zero tolerance program discussed above involves federal asset seizure and civil forfeiture under the Comprehensive Forfeiture Act (CFA) of 1984. When the CFA is used by prosecutors to obtain a pre-trial restraining order prohibiting a defendant from using assets which otherwise would be available to retain counsel, representation is provided by an attorney appointed under the Criminal Justice Act. On June 22, 1989, the United States Supreme affirmed the constitutionality of applying the CFA to assets needed by a defendant to retain counsel and, as a consequence, it is expected than an increasing number of federal prosecutors will pursue this option aggressively.

Appointments for Other Than Felonies

While the Defender Services Appropriation principally is used to provide representational services to criminal defendants charged with a felony or a Class A misdemeanor, appointments also are made under the Criminal Justice Act in other circumstances. These circumstances may involve the following: persons charged with a Class B or C misdemeanor or an infraction where confinement is authorized and appointment of counsel is required in the interest of justice; persons entitled to one of the many hearings concerning mental competency provided for in chapter 313 of title 18, United States Code; petitioners in habeas corpus and 28 U.S.C. 2255 proceedings; material witnesses in custody; persons charged with a violation of probation or parole; and offenders transferred to and from the United States pursuant to prisoner transfer treaties.

Habeas Corpus Petitions

In addition to criminal filings, a dramatic increase in the number of habeas corpus petitions filed by state prisoners who have been sentenced to death is projected for fiscal years 1989, 1990 and 1991. Approximately 370 persons sentenced to death filed federal habeas corpus petitions by the end of fiscal year 1989. A recent study of caseload and projected costs estimates that 375 new death penalty federal habeas corpus cases will be filed in fiscal year 1990 and 500 cases will be filed in fiscal year 1991.

Death Penalty Resource Centers

Generally, few attorneys--including attorneys from the private bar, attorneys who in the past have provided representation on a pro bono publico basis and attorneys or law firms who have been compensated under the Criminal Justice Act--have the expertise to provide representation in death penalty federal habeas corpus cases. Moreover, in the past, a number of non-profit organizations have relied upon private funds to represent death-sentenced inmates and to recruit private attorneys for appointment in these cases. These organizations are no longer able to obtain sufficient resources to meet the growing demand for the services they provide. As a consequence, it is becoming increasingly difficult to satisfy the growing need for attorneys to provide representation in these cases.

For all of these reasons, the Defender Services Appropriation has been and will continue to be required to provide an increasing amount of resources to provide representation in death penalty federal habeas corpus cases. Because federal defender organizations have neither the staffing nor other resources to provide representation in a significant number of these cases, death penalty resource centers have been established to facilitate the efforts of federal courts to appoint counsel and provide effective representation in death penalty cases. Such centers have been authorized to provide services in judicial districts in which the bulk of death penalty cases have been filed. They have been designated as Community Defender organizations and funded through grants under subsection (g)(2)(B)(ii) of the Criminal Justice Act. The centers monitor the status of death penalty cases pending in the districts they serve, recruit attorneys to represent death-sentenced federal habeas petitioners and provide assistance and expert advice to attorneys assigned in such cases. In addition, each center represents a number of death-sentenced petitioners directly. Finally, most centers receive non-Criminal Justice Act funds to support work performed on behalf of death-sentenced inmates whose cases are in the state court phase of litigation.

Resource centers encourage private attorneys to accept assignments in death penalty federal habeas corpus cases by providing them with expert advice and assistance regarding death penalty litigation. In so doing, resource centers improve the quality of representation provided and also may produce significant cost savings. Moreover, by monitoring the progress of each case and working to ensure that competent lawyers litigate each case from beginning to end, resource centers may reduce some of the inefficiencies which lead to complaints about the length of time it takes to litigate death penalty cases to conclusion. Even if resource centers had not been established, attorneys would be appointed for the many death-sentenced inmates bringing petitions in the federal courts. Few attorneys are knowledgeable about such cases; most have to spend considerable amounts of time learning the relevant specialized procedures and substantive law. The resource centers reduce this time expenditure.

Increased Cost and Service

As a result of new federal criminal law initiatives and general cost increases, not only has the number of persons requiring services under the Criminal Justice Act grown, but the cost of providing those services also has increased.

Sentencing Reform Act of 1984

For example, implementation of the Sentencing Reform Act of 1984 is expected to continue to have a substantial impact on the workload of defender offices as well as on private attorneys providing services under the Criminal Justice Act to financially eligible criminal defendants. While litigation concerning its constitutionality had forestalled implementation of the Guidelines, in many districts, the United States Supreme Court cleared the way for full implementation of the Guidelines, when it rejected the principal constitutional challenges to the Act in United States v. Mistretta, 109 S.Ct. 647 (1989), decided January 18, 1989. The Sentencing Reform Act requires that a complex sentencing guideline structure be employed upon conviction. The calculation of sentences is much more time consuming than was formerly the case. Attorneys must ensure the accuracy of every fact relevant under the guideline scheme because of the effect each will have on the sentence ultimately imposed. Thus, defense counsel must investigate defendants' relevant unadjudicated conduct, make complicated assessments of defendants' criminal histories, prepare written memoranda addressing sentencing disputes and prepare for evidentiary hearings to resolve disputes regarding facts relevant to sentencing decisions under the guidelines.

Guideline sentencing is expected to result in more cases being tried. The narrow range associated with prison terms (the maximum term may not exceed the minimum by more than 25 percent) coupled with a prosecutorial reluctance to enter into plea bargains which significantly diminish the presumptive sentence is expected to remove much of the incentive to plead guilty and result in more cases going to trial. Along with more trials, it is believed that greater appellate activity will result from the option of both government and defense sentencing appeals under the guidelines. This new activity is expected to be offset, somewhat, by the guideline scheme's elimination of motions pursuant to Rule 35 (Correction of Sentence) of the Federal Rules of Criminal Procedure. The work associated with sentencing appeals, however, is substantially more time-consuming than that required by the usual Rule 35 motion.

Racketeering Influenced and Corrupt Organizations Act Continuing Enterprise Act

In addition to the Sentencing Reform Act, prosecutorial efforts to make use of the Racketeer Influenced and Corrupt Organizations Act and the Continuing Enterprise Act have added to the cost of providing defense services under the Criminal Justice Act. Prosecutions under these acts often involve lengthy multiple-defendant trials and appeals in which an attorney representing one defendant may have to devote an inordinate amount of time to reviewing evidence, attending proceedings and reviewing records that are largely irrelevant to the case against that attorney's client.

General Cost Increases

The cost of representation under the Criminal Justice Act also is affected by the need to have compensation rates for private attorneys providing services under the Act keep pace with rising overhead costs those attorneys have had to meet in recent years. In order to address this need, the Judicial Conference, pursuant to the Criminal Justice Act Revision of 1986, has established alternative hourly attorney compensation rates in selected judicial districts where substantial justification for a rate increase has been demonstrated. With respect to death penalty cases, Congress, in enacting the Anti-Drug Abuse Act of 1988, established a federal death penalty for drug-related killings and, notwithstanding any other provision of law, authorized courts to fix compensation paid in death penalty cases, including death penalty habeas corpus cases "at such rates or amounts as the court determines to be reasonably necessary . . . ." These higher rates are needed to help to ensure that experienced and qualified attorneys will be willing to accept Criminal Justice Act appointments.

Therefore, it is estimated that an appropriation of $167,580,000 will be required in fiscal year 1991 to satisfy the projected increase in the number of persons represented and the increased cost of the Criminal Justice Act caseload. This amount represents an increase of $41,119,000 over the 1990 appropriation of $126,461,000.

The following is a schedule showing caseloads and average costs of Criminal Justice Act programs for fiscal years 1989, 1990 and 1991. The details of the budgetary requirements for the Criminal Justice Act programs also are below.

CRIMINAL JUSTICE ACT C[illegible] BY ACTIVITY
FISCAL YEARS 1989-1991

	FY 1989 (Estimated)		FY 1990 (Estimated)		FY 1991 (Estimated)	
	Cases	Average Cost	Cases	Average Cost	Cases	Average Cost
Federal Defenders (1)						
Regular Representations	35,689	$1,111	40,500	$1,384	42,813	$1,318
Death Penalty Resource Centers	313 (2)	10,447	545 (2)	14,470	790 (2)	14,603
Subtotal Federal Defenders	36,002	1,192	41,045	1,489	43,603	1,559
Panel Attorneys						
Appeal Cases	3,627	2,532	4,322	3,230	4,517	3,680
District Cases	30,010	1,880	30,987	2,048	32,250	2,252
Death Penalty Cases	315	36,364	335	73,451	450	73,450
Subtotal Panel Attorneys	33,952	2,154 (3)	35,644	2,829 (3)	37,217	3,288 (3)
Related Investigative, Expert and Other Services						
Regular Representations		119		133		138
Death Penalty Cases				1,385		2,232
Subtotal Other Services		119		148		161
Total Panel Attorneys and Other Services	33,952	2,273	35,644	2,975	37,217	3,449
Subtotal Defenders, Panel Attorneys and Other Services	69,954	1,560	76,689	1,986	80,820	2,202
TOTAL	69,954	$1,621	76,689	$2,039	80,820	$2,280

(1) The term Federal Defenders includes both Federal Public and Community Defender Organizations.

(2) Death Penalty Resources Centers' caseload represents new and carryover cases, both direct representation and consulting in representation.

(3) Adjusted to reflect the fact that not all assignments result in the filing of claims and payments therefore.

Federal Defender Organizations

The 1970 amendments to the Criminal Justice Act (Pub. L. 91-447), authorize the establishment of Federal Defender organizations.

Federal Public Defender Organizations - Each Federal Public Defender organization is required to submit its proposed budget to the Director of the Administrative Office of the United States Courts. The Director submits a budget for each organization to the Judicial Conference Committee on Defender Services which approves the budgets on behalf of the Judicial Conference before being included in the budget of the Judiciary. The statute provides that the Federal Public Defender shall be appointed by the circuit court for a term of four years and the court shall fix compensation at a rate not to exceed the compensation received by the United States Attorney for the same district. The circuit court approves the number of full-time attorneys employed by the Federal Public Defender office. All other office personnel are appointed in such number as is approved by the Director of the Administrative Office of the United States Courts.

Community Defender Organizations - A Community Defender organization is a nonprofit defense counsel service established and administered by a group authorized by a district court Criminal Justice Act plan with the approval of the judicial council of the circuit. Such organizations are eligible to furnish legal representation and receive payments for services rendered in and out of court in the same manner and to the same extent as private attorneys are compensated under the Act. Community Defender organizations may apply for and receive, with the approval of the Committee on Defender Services on behalf of the Judicial Conference, an initial grant for expenses necessary to establish the organization and, in lieu of fees, sustaining grants to cover the cost of their operations. Sustaining grant funds may be used to pay compensation at levels comparable to and in accordance with the same standards and guidelines applicable to personnel compensation for Federal Public Defender organizations. The process of approving Community Defender organization sustaining grants is similar to the process for approving Federal Public Defender organization budgets.

Operating Costs - The cost of operating the 41 Federal Defender organizations in fiscal year 1989 was approximately $39.6 million. During the fiscal year these organizations were assigned 35,689 cases and disposed of 34,005. As of September 30, 1989, there were 12,684 cases pending. The overall Federal Defender cost per case in fiscal year 1989 is estimated to be $1,111. This amount compares favorably with the $1,824 cost per case for Criminal Justice Act panel attorneys[3], particularly when it is considered that the below market panel attorney compensation rates reflect reliance upon the obligation of attorneys to provide services *pro bono publico* and that the Federal Defender organizations are performing other services for and on behalf of the courts. These services include recruiting, advising, counseling, and providing training to panel attorneys and often the general administration of the Criminal Justice Act panel, thus relieving the court of the burden of determining panel attorney availability for assignments, and screening of Criminal Justice Act vouchers.

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[3] Information regarding panel attorneys begins on page 6.19.

In many instances the most complex and protracted cases are assigned to Federal Defender offices, either in recognition of their efficiency, competence, proficiency, experience, and availability, or because panel attorneys find it an economic hardship to become involved in protracted cases. Federal Defenders were asked to submit their budget and grant requirements for fiscal year 1991, and revised estimates for fiscal year 1990 in the Spring of 1989. The following is a summary of the approved requests.

FEDERAL DEFENDER ORGANIZATIONS
BUDGETARY REQUIREMENTS - FISCAL YEAR 1990

	Comp.	Benefits	Travel	Trans.	Space Rental	Other	Printing	Expert Services	Contract Services	Supplies	Equipment	Other	Grants	Total	Repre-sented	Per Case
Ariz.	$1,065,276	$252,989	$33,000	$1,300	$153,000	$38,638	$1,300	$41,000	$29,300	$9,000	$45,400	...	...	$1,667,423	1,700	$981
Cal. (N)	1,261,944	280,735	34,990	400	156,900	44,587	500	64,660	31,800	10,300	34,338	...	...	1,921,390	1,514	1,269
Cal. (E)	1,122,084	266,250	32,200	5,100	258,662	48,612	1,500	34,700	30,556	6,300	118,450	...	...	1,925,274	1,788	1,077
Cal. (C)	1,909,567	469,317	26,200	...	297,100	140,213	12,000	78,300	86,162	26,000	101,850	...	...	3,226,709	1,813	1,780
Cal. (S)*	(1,575,333)	(330,820)	(17,730)	(2,500)	(281,335)	(82,460)	(4,200)	(41,245)	(32,675)	(15,000)	(47,587)	(52,701)	2,404,046	2,404,046	6,340	392
Colo.	698,490	152,018	19,500	200	65,000	26,416	700	13,000	10,350	7,000	39,640	...	...	1,032,322	529	1,951
Conn.	354,030	81,309	9,500	150	72,500	29,670	2,500	13,000	9,000	4,000	39,950	...	...	617,297	282	2,189
D.C.	696,043	187,932	10,000	500	114,500	34,250	...	23,000	14,000	8,000	14,500	...	...	1,102,725	515	2,141
Fla. (N)	398,086	81,360	14,000	...	45,000	18,032	350	9,000	5,200	3,000	34,250	...	...	609,086	392	1,554
Fla. (M)	1,030,535	218,524	34,200	500	121,200	52,259	1,200	22,500	76,600	11,900	120,200	...	...	1,689,718	1,166	1,449
Fla. (S)	1,859,944	302,108	63,852	750	252,500	54,287	2,500	32,750	55,734	16,562	69,890	...	...	2,910,877	1,959	1,486
Ga. (N)*	(606,180)	(105,967)	(10,300)	(1,000)	(78,500)	(29,300)	(2,900)	(21,400)	(13,500)	(10,500)	(46,700)	(17,900)	944,947	944,947	1,044	905
Hawaii	703,722	153,089	29,500	...	88,000	19,900	600	22,300	18,200	6,000	25,000	...	...	1,050,591	621	1,692
Ill. (N)*	(819,470)	(152,735)	(6,000)	...	(138,000)	(32,000)	(2,000)	(13,500)	(10,300)	(18,000)	(51,500)	(7,000)	1,242,505	1,242,505	785	1,583
Ill. (C&S)& Mo. (E)	698,470	159,642	19,500	1,300	60,383	23,720	3,400	9,350	20,900	9,200	72,745	...	...	1,078,610	600	1,798
Kansas	497,528	115,392	22,300	100	64,050	29,466	1,100	10,000	13,025	4,900	39,700	...	...	777,784	465	1,672
La. (E)	573,062	127,927	7,250	250	57,000	18,111	300	6,000	12,950	4,600	56,600	...	...	864,050	540	1,600
Md.	934,180	248,328	24,600	5,000	132,200	46,540	3,320	39,750	23,575	12,300	39,550	...	...	1,501,573	1,163	1,291
Mass.	354,040	73,164	6,310	...	38,000	15,965	1,125	7,450	11,300	1,950	25,310	...	...	554,614	187	2,966
Mich. (E)*	(741,056)	(148,000)	(13,600)	...	(92,300)	(38,350)	(2,100)	(7,500)	(13,320)	(6,000)	(46,000)	(40,100)	1,130,356	1,130,356	760	1,514
Minn.	334,546	70,719	13,000	...	35,495	11,750	1,200	19,000	9,522	3,300	27,600	...	...	526,032	360	1,463
Mo. (W)	601,055	105,632	8,500	500	55,000	26,253	300	15,000	12,500	3,500	35,000	...	...	864,240	600	1,440
Nevada	666,769	135,167	15,500	900	101,900	33,732	900	8,500	17,600	7,350	54,600	...	...	1,042,918	642	1,624
N.J.	915,639	208,076	21,000	...	50,000	36,400	1,600	15,500	10,300	6,200	52,000	...	...	1,316,715	990	1,330
N.M.	661,012	172,996	26,120	250	88,501	28,774	975	36,300	17,382	5,300	55,516	...	...	1,085,566	618	1,757
N.Y. (E&S)*	(2,676,091)	(637,414)	(21,000)	...	(330,925)	(208,009)	(3,000)	(63,000)	(151,726)	(33,150)	(141,426)	(91,700)	4,358,241	4,358,241	2,525	1,726
N.C. (E)	497,981	129,296	39,375	300	87,060	32,092	1,400	24,000	17,630	4,000	21,400	...	...	855,334	427	2,003
Ohio (N)	367,563	62,040	13,000	300	53,000	17,910	...	6,000	7,000	3,000	18,000	...	...	547,821	240	2,283
Okla.	452,663	114,507	21,000	500	66,000	16,960	1,000	41,000	12,000	4,500	28,000	...	...	758,170	545	1,391
Oregon	786,917	220,337	21,000	250	96,085	35,710	1,500	27,300	49,000	12,000	57,900	...	...	1,308,119	700	1,869
Pa. (E)*	(762,089)	(137,100)	(7,825)	...	(74,786)	(17,256)	(1,500)	(15,000)	(13,600)	(11,750)	(34,100)	(50,700)	1,126,460	1,126,460	605	1,862
Pa. (M)	395,482	110,735	22,000	600	52,000	19,658	1,500	13,500	15,165	3,750	35,350	...	...	669,940	319	2,100
Pa. (W)	396,800	82,509	21,000	400	54,000	16,646	1,500	13,500	15,300	3,750	29,250	...	...	634,695	344	1,845
P.R.	401,038	81,670	8,000	6,000	37,000	20,000	1,000	5,000	13,900	4,000	37,000	...	...	615,608	576	1,068
S.C.	288,080	56,795	19,000	...	31,000	8,460	600	7,000	3,100	1,600	24,330	...	...	440,765	375	1,175
Tenn. (M)	404,370	108,536	15,500	200	46,000	10,565	800	11,000	8,000	3,650	24,000	...	...	640,621	366	1,750
Tenn. (W)	320,800	58,097	8,700	...	29,700	9,000	200	6,100	17,060	1,300	26,850	...	...	479,415	346	1,386
Tex. (S)	1,236,018	289,539	25,350	400	122,034	48,521	2,000	18,300	36,765	11,600	119,495	...	...	1,908,222	2,235	854
Tex. (W)	1,044,924	235,751	35,500	320	95,000	52,500	500	8,075	9,825	7,260	43,640	...	...	1,533,375	1,370	1,127
Tex. (N)	548,294	153,522	23,500	500	76,492	33,500	1,000	20,000	12,000	7,000	21,000			896,808	470	1,908
V.I.	539,186	141,183	19,500	3,500	65,000	14,217	600	13,500	9,400	3,700	43,200	...	...	852,986	420	2,031
Wash. (W)& Alas.	866,619	223,170	55,500	500	154,720	41,590	1,300	27,600	38,900	8,750	50,700	...	...	1,462,265	991	1,476
W.Va. (S)	343,288	79,290	20,300	...	50,000	13,467	375	13,000	20,675	2,450	22,715	...	...	565,560	265	2,134
Subtotal	$26,309,720	$6,223,415	$879,455	$31,030	$3,402,962	$1,177,163	$52,955	$777,275	$796,176	$249,672	$1,705,092	...	$11,306,955	$52,062,640	40,500	$1,385
CALR	...	...	...	...	...	...	...	...	300,000	...	...	...	...	300,000	...	...
Resource Centers**	...	...	...	...	...	...	...	...	...	...	...	...	7,086,000	7,086,000	490	14,470
Pay Costs:																
FPD	770,000	184,000	...	...	...	...	...	...	...	...	...	...	...	954,000	...	
CDO	(208,000)	(46,000)	...	...	...	...	...	...	...	...	...	...	254,000	254,000	...	
Addt'l Lapse	(1,906,000)	(450,000)	...	...	...	...	...	...	...	...	...	...	...	(2,356,000)	...	...
Total	$25,173,720	$5,957,415	$879,455	$31,030	$3,402,962	$1,177,163	$52,955	$777,275	$1,096,176	$249,672	$1,705,092	...	$18,646,955	$58,300,640	41,045	$1,459

* Indicates Community Defender organization. Since these private organizations are funded out of the object classification "grants," their requirements by category are shown as non-add items and are not included in the totals for these respective classifications.

** See page 6.25 for additional information.

FEDERAL DEFENDER ORGANIZATIONS
BUDGETARY REQUIREMENTS - FISCAL YEAR 1991

	Comp.	Benefits	Travel	Trans.	Space Rental	Other	Printing	Expert Services	Contract Services	Supplies	Equipment	Other	Grants	Total	Repre-sented	Per Case
Ala.	$297,210	$65,709	$29,000	$600	$56,510	$12,000	$500	$8,300	$10,450	$2,000	$22,000	...	...	$535,625	237	$2,260
Ariz.	1,215,169	293,877	36,000	12,000	216,000	42,250	2,000	31,000	48,875	11,000	63,000	...	...	1,971,171	1,900	1,037
Cal. (N)	1,337,656	299,112	42,747	1,700	220,000	39,900	600	86,000	52,000	17,030	44,294	...	...	2,141,090	1,665	1,286
Cal. (E)	1,284,413	310,267	26,700	100	266,000	25,925	1,800	31,700	38,520	7,300	46,950	...	...	2,074,377	1,885	1,100
Cal. (C)	2,067,090	488,407	38,000	380	396,000	145,007	15,000	85,320	72,000	30,000	42,000	...	...	3,282,812	1,813	1,811
Cal. (S)*	(1,814,906)	(417,420)	(29,070)	(3,220)	(346,976)	(99,420)	(5,250)	(45,800)	(108,070)	(21,067)	(97,720)	(61,652)	3,045,362	3,045,362	6,345	480
Colo.	725,771	164,194	12,000	300	67,000	22,275	800	14,000	19,125	7,000	27,560	...	...	1,067,025	550	1,940
Conn.	360,366	84,974	10,000	200	73,000	22,328	3,000	14,000	19,000	3,000	30,300	...	...	632,768	307	2,061
D.C.	754,000	211,000	11,300	350	128,000	37,000	0	25,000	29,000	9,000	18,000	...	...	1,222,650	899	1,360
Fla. (N)	418,140	85,999	18,000	100	33,000	28,122	250	14,300	17,100	3,500	25,200	...	...	658,939	468	1,402
Fla. (M)	1,214,858	267,478	43,000	1,000	162,100	55,473	1,400	26,320	99,000	17,720	85,900	...	...	1,943,377	1,262	1,540
Fla. (S)	1,962,068	520,364	91,100	1,000	260,100	64,996	2,300	41,900	106,722	25,200	64,000	...	...	3,139,750	2,117	1,480
Ga. (N)*	(703,363)	(128,487)	(11,300)	(2,000)	(89,300)	(33,100)	(4,300)	(22,400)	(31,500)	(13,000)	(42,070)	(20,200)	1,095,930	1,095,930	1,140	961
Hawaii	733,342	164,463	22,300	0	83,000	30,401	600	22,300	22,000	7,000	24,000	...	...	1,109,406	642	1,728
Ill. (N)*	(882,926)	(170,600)	(4,600)	0	(140,000)	(26,000)	(1,000)	(18,500)	(24,200)	(10,000)	(25,000)	(8,394)	1,282,930	1,282,930	920	1,389
Ill. (C&S)& Mo. (E)	831,295	195,725	19,800	300	64,366	79,085	3,000	10,250	37,550	14,000	70,385	...	...	1,274,336	635	2,007
Kansas	519,786	121,315	22,500	100	45,000	29,087	1,100	10,000	13,680	6,460	21,020	...	...	789,428	483	1,634
La. (E)	663,210	135,571	7,500	300	60,000	20,085	300	7,000	24,700	6,000	25,500	...	...	950,170	577	1,648
Md.	1,040,043	239,404	27,000	1,400	141,000	49,275	3,850	46,000	35,525	13,600	32,630	...	...	1,629,727	1,286	1,267
Mass.	364,363	75,774	7,200	0	39,000	16,740	1,175	7,950	16,100	2,100	12,550	...	...	542,952	187	2,903
Mich. (E)*	(770,560)	(157,600)	(13,900)	(750)	(100,500)	(38,220)	(2,600)	(8,000)	(16,500)	(7,500)	(25,000)	(44,700)	1,186,764	1,186,764	770	1,541
Minn.	376,422	81,397	16,100	200	45,100	15,705	2,000	21,000	23,200	4,000	17,200	...	...	602,324	380	1,585
Mo. (W)	625,098	110,925	9,000	300	57,000	27,815	1,000	17,300	17,200	4,500	21,000	...	...	891,538	710	1,256
Nevada	699,000	143,237	17,000	970	105,000	25,109	1,300	11,000	19,000	7,000	39,000	...	...	1,066,436	686	1,555
N.J.	1,082,444	231,877	21,500	0	52,000	40,528	1,500	13,000	29,200	7,000	31,300	...	...	1,432,549	1,007	1,423
N.M.	702,000	189,510	30,640	300	83,300	29,112	1,100	26,300	32,000	3,450	17,300	...	...	1,127,228	613	1,839
N.Y. (S&E)*	(2,783,706)	(663,420)	(23,100)	0	(384,283)	(225,200)	(3,300)	(70,400)	(130,970)	(36,300)	(80,230)	(104,095)	4,496,371	4,496,371	2,525	1,781
N.C. (E)	524,672	136,667	39,875	300	90,000	33,041	1,000	19,300	20,300	3,000	25,200	...	...	893,355	844	1,059
Ohio (N)	385,648	66,233	17,000	300	35,000	18,213	0	8,000	14,300	4,000	21,000	...	...	569,694	251	2,269
Okla.	469,817	119,280	22,500	300	68,000	20,384	1,000	43,000	16,500	7,500	28,000	...	...	796,281	591	1,347
Oregon	819,444	229,497	22,300	300	110,000	46,175	1,200	34,000	49,300	14,000	34,000	...	...	1,354,836	730	1,856
Pa. (E)*	(793,647)	(152,600)	(14,300)	(300)	(90,000)	(37,200)	(1,300)	(13,500)	(20,600)	(11,000)	(79,000)	(30,600)	1,237,837	1,237,837	630	1,965
Pa. (M)	424,013	118,710	20,000	300	38,000	24,525	1,400	14,000	26,730	2,270	39,400	...	...	724,290	350	2,069
Pa. (W)	411,327	86,786	21,000	400	36,000	17,220	1,400	16,000	24,300	3,000	30,000	...	...	671,044	382	1,757
P.R.	435,996	91,470	8,000	300	96,691	19,212	1,200	5,000	19,300	4,000	26,000	...	...	706,770	628	1,125
S.C.	297,464	58,708	26,000	100	32,000	10,139	600	7,000	7,300	2,300	11,900	...	...	453,511	375	1,209
Tenn. (M)	423,918	113,024	17,200	200	47,000	15,930	800	12,500	11,900	3,600	17,000	...	...	664,652	376	1,776
Tenn. (W)	361,343	69,776	17,700	0	31,900	11,404	200	6,000	7,500	1,100	15,330	...	...	522,253	390	1,339
Tex. (S)	1,361,892	278,430	28,200	300	138,000	58,543	2,500	28,700	32,700	14,600	79,600	...	...	2,336,045	2,432	961
Tex. (W)	1,165,641	271,643	38,500	400	98,000	48,267	600	8,075	30,000	8,000	58,850	...	...	1,667,976	1,503	1,109
Tex. (N)	585,077	164,000	24,500	330	85,400	28,660	1,000	20,000	17,000	7,000	22,000			961,677	495	1,943
V.I.	354,463	146,000	28,000	6,000	60,000	13,860	700	16,300	16,025	4,300	29,300	...	...	866,066	430	2,014
Wash. (W)	700,676	173,764	24,800	900	112,997	31,068	900	21,000	25,000	7,000	26,400	...	...	1,123,805	792	1,421
W.Va. (S)	600,054	95,353	39,300	2,000	32,000	14,495	300	9,700	9,600	3,300	28,300	...	...	682,701	318	2,147
Subtotal	$28,386,036	$6,003,626	$964,212	$33,850	$3,775,372	$1,253,691	$60,125	$866,475	$1,102,302	$305,070	$1,240,235	...	$12,345,234	$67,376,228	42,013	$1,604
CJA **	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Resource Centers	...	...	...	...	...	...	...	...	...	...	...	...	11,536,014	11,536,014	790	14,603
Pay Center																
FPD	1,695,000	696,000	...	...	...	...	...	...	...	...	...	...		2,099,000	...	...
CDO	(370,000)	(66,000)										...	339,000	339,000		
Add'l Lapse	(2,702,000)	(666,883)	...	...	...	...	...	...	...	...	...	...	...	(3,369,883)	...	...
Total	$27,378,636	$6,386,743	$964,212	$33,850	$3,775,372	$1,253,691	$60,125	$866,475	$1,102,302	$305,070	$1,240,235	...	$24,220,248	$77,980,359	42,803	$1,822

* Indicates Community Defender organization. Since these private organizations are funded out of the object classification "grants," their requirements by category are shown as non-add items and are not included in the totals for those respective classifications.

** See page 6.2b for additional information.

FEDERAL DEFENDER ORGANIZATIONS
PERMANENT POSITIONS - FISCAL YEAR 1990

	Federal Defenders	Assistant Federal Defenders	Investigators	Admin Asst/ Secretary Clerical	Paralegals	Total
Ariz.	1	14	3	11	0	29
Cal. (C)	1	25	6	22	2	56
Cal. (E)	1	12	3	9	3	28
Cal. (N)	1	14	4	10	2	31
Cal. (S)*	(1)	(16)	(7)	(13)	(4)	(41)
Colo.	1	8	3	5	0	17
Conn.	1	3	1	3	0	8
D.C.	1	8	3	6	1	19
Fla. (M)	1	13	4	10	1	29
Fla. (N)	1	4	1	4	1	11
Fla. (S)	1	23	6	19	2	51
Ga. (N)*	(1)	(6)	(3)	(5)	(1)	(16)
Hawaii	1	6	1	5	2	15
Ill. (C&S) & Mo. (E)	1	7	2	5	1	16
Ill. (N)*	(1)	(8)	(3)	(5)	(2)	(19)
Kansas	1	5	2	5	0	13
La. (E)	1	7	1	5	1	15
Mass.	1	3	1	3	0	8
Md.	1	9	3	7	1	21
Mich. (E)*	(1)	(8)	(2)	(5)	(1)	(17)
Minn.	1	3	1	2	1	8
Mo. (W)	1	7	1	4	0	13
Nevada	1	7	2	6	1	17
N.C. (E)	1	5	2	4	1	13
N.J.	1	11	4	6	0	22
N.M.	1	7	2	5	2	17
N.Y. (E,S,& W)*	(1)	(25)	(7)	(19)	(3)	(55)
Ohio(N)	1	4	1	2	0	8
Okla.	1	6	0	3	0	10
Oregon	1	8	4	6	0	19
Pa. (E)*	(1)	(9)	(2)	(5)	(1)	(18)
Pa. (M)	1	4	1	4	2	12
Pa. (W)	1	4	1	3	1	10
P.R.	1	4	1	3	0	9
S.C.	1	3	1	2	0	7
Tenn. (M)	1	4	1	3	0	9
Tenn. (W)	1	3	1	2	1	8
Tex. (N)	1	6	2	5	1	15
Tex. (S)	1	10	2	10	0	23
Tex. (W)	1	14	3	7	0	25
V.I.	1	4	2	3	2	12
Wash. (W)	1	9	2	5	3	20
W.Va. (S)	1	3	1	2	1	8
Unassigned and unfunded positions						104
Total	37	295	79	216	33	764

* Indicates Community Defender organization. Since these offices operate on sustaining grants and are private organizations rather than agencies of the federal government, their employees are not technically federal employees. Thus, the positions are shown in parentheses as non-add items and are not included in the totals.

FEDERAL P ER ORGANIZATIONS
PERMANENT POSI FISCAL YEAR 1991

	Federal Defenders	Assistant Federal Defenders	Investigators	Admin Asst/ Secretary Clerical	Paralegals	Total
Ala.	1	2	1	1	1	6
Ariz.	1	16	3	11	1	32
Cal. (C)	1	25	6	22	3	57
Cal. (E)	1	14	4	10	3	32
Cal. (N)	1	14	6	10	2	31
Cal. (S)*	(1)	(17)	(8)	(16)	(6)	(48)
Colo.	1	8	3	5	0	17
Conn.	1	3	1	3	0	8
D.C.	1	8	5	6	1	19
Fla. (M)	1	15	5	11	1	33
Fla. (N)	1	4	1	4	1	11
Fla. (S)	1	25	6	19	2	53
Ga. (N)*	(1)	(7)	(3)	(6)	(1)	(18)
Hawaii	1	6	1	3	2	15
Ill. (C&S) & Mo. (E)	1	8	2	6	2	19
Ill. (N)*	(1)	(8)	(3)	(5)	(2)	(19)
Kansas	1	5	2	5	0	13
La. (E)	1	7	1	5	1	15
Mass.	1	3	1	3	0	8
Md.	1	9	3	7	1	21
Mich. (E)*	(1)	(8)	(2)	(5)	(1)	(17)
Minn.	1	3	1	2	2	9
Mo. (W)	1	7	1	4	0	13
Nevada	1	7	2	6	1	17
N.C. (E)	1	3	2	6	1	13
N.J.	1	12	4	7	0	24
N.M.	2	7	2	5	2	17
N.Y. (E,S,& W)*	(1)	(25)	(7)	(19)	(3)	(45)
Ohio (N)	1	4	1	2	0	8
Okla.	1	4	2	3	0	10
Oregon	1	8	4	6	0	19
Pa. (E)*	(1)	(9)	(2)	(5)	(1)	(18)
Pa. (M)	1	4	1	4	2	12
Pa. (W)	1	4	1	3	1	10
P.R.	1	4	1	4	0	10
S.C.	1	3	1	2	0	7
Tenn. (M)	1	4	1	3	0	9
Tenn. (W)	1	4	1	2	1	9
Tex. (N)	1	6	2	5	1	15
Tex. (S)	1	22	4	13	0	40
Tex. (W)	1	14	3	7	0	25
V.I.	1	4	2	3	2	12
Wash. (W)	1	8	1	4	2	16
W.Va. (S)	1	4	1	2	1	9
Unassigned and unfunded positions						72
Total	38	310	83	224	37	784

* Indicates Community Defender organization. Since these offices operate on sustaining grants and are private organizations rather than agencies of the federal government, their employees are not technically federal employees. Thus, the positions are shown in parentheses as non-add items and are not included in the totals.

The funding increase requested for Federal Defender organizations from 1990 to 1991 is $8,079,000; Federal Defender organizations expect to receive 43,603 cases in 1991, compared with 41,045 in 1990 and 36,002 in 1989.

Item 1. Restoration of amount sequestered to appropriation base resulting from the Balanced Budget and Emergency Deficit Control Act of 1985 ($1,599,000)

In accordance with the sequestration procedures authorized in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) and the Reconciliation Act of 1989 (P.L. 101-239), a reduction of 1.4 percent in non-exempt budget authority was imposed in fiscal year 1990. The sum of $1,599,000 has been included in this request to restore the sequestered amount to the appropriation base.

Item 2a. Federal Defender Organizations: Additional Funding Required to Restore Base Appropriation ($22,000,000)

The fiscal year 1989 amount available for Defender Services was $126,500,000. Of this amount, only $104,500,000, a difference of $22,000,000 was obligated. Because the Defender Services appropriation is a 'no-year' appropriation, the amount of $22,000,000 was available for obligation in fiscal year 1990. Current estimates of obligations indicate that the entire 1990 appropriation of $126,461,000 and the unobligated balance carried forward from fiscal year 1989 of $22,000,000 will be totally obligated in fiscal year 1990. In order to operate at the same level in fiscal year 1991 as in fiscal year 1990, the base of the appropriation must be increased by the unobligated balance available in 1990. The sum of $22,000,000 is therefore, required to restore the base appropriation to the 1990 level.

Item 2b. Federal Defender Organizations: Fiscal year 1990 increase for pay cost ($1,613,000)

In accordance with the P.L. 101-136, federal employees will receive a 3.6 percent pay increase, effective the first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $1,613,000. The funding for nine months ($1,208,000) was absorbed in 1990, but the full amount of $1,613,000 is required in 1991.

Item 2c. Federal Defender Organizations: Fiscal year 1991 increase for pay costs ($825,000)

It is expected that all federal employees will receive a 3.5 percent pay raise effective in January 1991. The sum of $825,000 ($667,000 for personnel compensation and $158,000 for related benefits has been included to cover the cost of this increase for nine months (January - September 1991).

Item 2d. Federal Defender Organizations: Additional workload and increased costs of operation ($2,042,000)

Exclusive of increased funding for the Community Defender Death Penalty Resource Centers of $2,000,000, an additional $2,042,000 will be required for the increased costs of operation for Federal Defender organizations. This amount includes funding for 28 additional positions which have been allocated to Federal Public Defender organizations, and the increased costs of personnel, including promotions and within grade salary advancements; General Services Administration space rental; expert and other case related services necessary pursuant to the Criminal Justice Act, and other inflationary adjustments in such areas as supplies, equipment and communication services. Details of these requirements can be found on pages 6.14 to 6.17 of the justifications.

Representation by Panel Attorneys

The Criminal Justice Act Revision of 1986 substantially changed the Criminal Justice Act compensation limitations. While the "general" hourly rates for attorney compensation were retained ($40 per hour for out-of-court time; $60 per hour for in-court time), the Judicial Conference is authorized to increase these hourly rates up to a maximum of $75 for individual districts or circuits where the general rates are determined to be inadequate. In fiscal year 1990, three years after the effective date (March 14, 1987), the Judicial Conference was further authorized to increase the $40, $60 and $75 maximums by an amount not to exceed the annual federal pay comparability increases received by federal employees. In addition, the Criminal Justice Act Revision increased the attorney case compensation maximums to $3,500 for felonies, $2,500 for appeals, $1,000 for misdemeanors, and $750 for other representations under the Criminal Justice Act. Payment in excess of these limitations may be made to provide fair compensation in cases involving extended or complex representation when so certified by the presiding judicial officer and approved by the chief judge of the circuit, or by an active circuit judge to whom excess compensation approval authority has been delegated. Finally, the Anti-Drug Abuse Act of 1988 authorized courts to fix the compensation paid in death penalty cases, including death penalty habeas corpus cases, "at such rates or amounts as the court determines to be reasonably necessary . . .", notwithstanding any other provision of law.

During fiscal year 1989, approximately 33,637 persons were represented by panel attorneys under the Criminal Justice Act, exclusive of death penalty cases; 3,627 in the United States courts of appeals and 30,010 in the United States district courts. The average cost per case, excluding transcripts, is expected to be approximately $2,932 for services on appeal and $1,690 for services other than appeal. The composite average cost inclusive of death penalty cases is estimated to be $2,154 per case. Based on past experience, the projected composite average cost of representation by panel attorneys for fiscal year 1990 will be $2,829 and for fiscal year 1991 will be $3,288. By comparison, the cost per case for representation by Federal Defender organizations is projected to be $1,459 in fiscal year 1990 and $1,559 in fiscal year 1991. (See page 6.11)

Item 3a. Panel Attorney Representation: Liquidation of panel attorney appointments made in fiscal year 1991 and prior years ($10,240,000)

A change in the accounting for the payment of panel attorneys and related experts and other services was implemented in fiscal year 1989 as authorized in the fiscal year 1989 supplemental request. Under the revised procedures, the current appropriation will be charged for the invoices of all panel attorney and other related services regardless of the year of appointment. The estimated requirements for fiscal years 1989, 1990 and 1991 are based on historical data indicating the percentages of current and prior year appointments paid in a given fiscal year. The following table shows the estimated requirements for liquidation of appointment costs in fiscal years 1989, 1990 and 1991.

LIQUIDATION OF PANEL ATTORNEY APPOINTMENTS AND RELATED EXPERT AND OTHER SERVICES

	Estimated Costs of Appointments & Related Prior Year Balances	Invoices to be Paid	Unpaid Invoices in Future Years
FISCAL YEAR 1989			
1988 and Prior.	$ 57,000	$41,733	$15,267
1989.	66,206	15,572	50,634
Totals.	$123,206	$57,305	$65,901
FISCAL YEAR 1990			
1989 and Prior.	$ 65,901	$58,360	$ 7,541
1990.	90,900	24,700	66,200
Totals.	$156,801	$83,060	$73,741
FISCAL YEAR 1991			
1990 and Prior.	$ 73,741	$67,300	$ 6,441
1991.	110,000	26,000	84,000
Totals.	$183,741	$93,300	$90,441
Increased Cost in Fiscal Year 1991 Over 1990		$10,240	

The estimated fiscal year 1991 appointment costs for panel attorneys and related expert and other services, exclusive of transcripts, on which the liquidation requirements are based are projected as follows.

Based on the fiscal year 1991 projected increase in criminal filings of 4.1 percent, The estimated caseload is 37,217 at an average panel attorney cost per case of $3,288 per case, including death penalty representations and "alternative rates" for private attorney representation in high rate geographical areas. This estimate takes into account the fact that not all assignments result in the filing of a claim for payment.

The federal courts are faced with a projected 500 new death penalty habeas corpus petitions being filed in fiscal year 1991. It is estimated that 450 of these petitions will be handled by private attorneys, 50 of whom will be providing services pro bono publico. Each case is expected to involve the use of expert services and miscellaneous expenses will also be paid to counsel. The projected hours of attorney time are approximately 805 for each case.

Based upon these assumptions, each death penalty habeas corpus petition will result in a cost of $72,450 per case plus an additional $2,222 for any required expert services.

The following tables shows Panel Attorney caseload and costs for fiscal years 1985 - 1991.

Fiscal Year	U. S. Courts of Appeals No. Cases	U. S. Courts of Appeals Avg. Atty. Cost	U. S. District Courts No. Cases	U. S. District Courts Avg. Atty. Cost	Total Costs No. Cases	Total Costs Avg. Atty. Cost
1985	2,331	2,480	23,964	1,514	26,295	1,586
1986(1)	2,399	2,575	26,103	1,425	28,479	1,525
1987(1)	2,474	2,889	26,397	1,664	31,391	1,778
1988(1)	3,082	2,900	27,740	1,827	32,019	1,954
Estimates(2)						
1989	3,627	2,932	30,010	1,690	33,637	1,824
1990	4,322	3,220	30,997	2,048	35,319	2,191
1991	4,517	3,460	32,250	2,252	36,767	2,400

(1) Since there are a substantial number of outstanding claims, figures are projections based on currently available data and historical trends.

(2) Estimates for 1989-1991 are exclusive of Death Penalty cases. Total caseload and average cost inclusive of Death Penalty cases is shown on page 6.11.

Investigative, Expert, and Other Services (Excluding Transcripts)

Investigative, expert, and other services necessary for an adequate defense also are available to persons who are furnished representation under the Act and, in some circumstances, to persons who have retained counsel but are financially unable to secure these services. The Criminal Justice Act Revision of 1986 also effected changes in the procedures and compensation limits pertaining to investigative, expert, and other services. Attorneys now may obtain services in amounts up to $300, without prior authorization but subject to the ultimate approval of the presiding judicial officer. Any request for payment for services in excess of that amount must be authorized in advance, unless the presiding judicial officer determines, in the interest of justice, that timely procurement of the necessary services could not await prior authorization. In addition, the presiding judicial officer now may approve up to a maximum of $1,000. Any claim in excess of this amount may only be paid if the presiding judge certifies that excess compensation is necessary and the chief judge of the circuit (or an active circuit judge to whom excess compensation approval authority has been delegated) approves the claim.

Based on the projected caseload, as well as the complex and extended nature of the cases currently being assigned to Criminal Justice Act attorneys, it is expected that expenditures for such services will increase in fiscal years 1990 and 1991 from $5,200,000 to $6,000,000, an increase of $800,000 as shown below. The amount requested for fiscal year 1991 includes $1,000,000 for death penalty habeas corpus petitions.

Expert Services	Actual				Estimate			FY 1991 over
	1985	1986	1987	1988	1989	1990	1991	FY 1990
Investigators	$ 538,573	$ 600,099	$ 950,319	$ 970,993	$1,249,000	$1,612,000	$1,880,000	$+ 268,000
Interpreters	218,915	726,833	459,044	402,890	808,000	1,040,000	1,210,000	+ 170,000
Psychiatrists	273,348	309,195	314,516	310,968	1,087,000	1,408,000	1,657,000	+ 249,000
Other Experts	835,237	780,585	1,381,628	1,860,002	2,018,000	2,600,000	3,023,000	+ 423,000
Total Cost	$1,866,073	$2,416,712	$3,105,507	$3,544,853	$5,162,000	$6,660,000	$7,770,000	$+1,110,000
Breakdown of Cost:								
Federal Defender organizations	475,044	336,383	335,792	361,750	1,117,000	1,460,000	1,770,000	+ 310,000
Panel Attorneys	1,391,029	2,080,329	2,769,715	3,183,103	4,045,000	5,200,000	6,000,000	+ 800,000

Fees for Transcripts

Item 4. Increased Cost of Transcripts Due to Workload ($500,000)

Payments relating to fees for transcripts of judicial proceedings involving eligible persons are authorized under the Criminal Justice Act. The increase in the cost of transcripts provided pursuant to the Criminal Justice Act is to a great extent attributable to the increasing number of complex and extended multiple defendant white collar and narcotics cases. With the passage of the Anti-Drug Abuse Act of 1988, as well as other factors affecting the Criminal Justice Act caseload as described above, an increase in caseload, and subsequently transcript costs, must be projected. The following table shows the transcript payments, including estimates from 1989 through 1991.

DEFENDER SERVICES TRANSCRIPTS COSTS
FISCAL YEARS 1985 - 1991

FISCAL YEAR	AMOUNT	INCREASE
Actual		
1985	$2,707,768	$+ .....
1986	$3,300,000	$+592,232
1987	$3,200,000	$-100,000
1988	$3,520,680	$+320,680
Projected		
1989	$4,086,000	$+565,320
1990	$5,000,000	$+914,000
1991	$5,500,000	$+500,000

Item 5. Death Penalty Resource Centers ($2,000,000)

It is anticipated that an additional $2,000,000 above the amount available in the fiscal year 1990 appropriation will be required to operate Death Penalty Resource Centers in fiscal year 1991. This increase is needed to provide funding for seven additional centers to serve the states of Idaho, Illinois, Indiana, Montana, Nevada, Ohio, Oregon, Pennsylvania, Virginia, and Washington. Currently it is anticipated that four of these states may combine to establish a regional center.

The $2,000,000 amount was derived by analyzing each state's projected federal death penalty habeas corpus caseload and the costs associated with the current centers. The following tables detail the estimated federal habeas corpus death penalty caseload and resource center funding requests for fiscal years 1990 and 1991.

FEDERAL DEFENDER ORGANIZATIONS
DEATH PENALTY HABEAS CORPUS RESOURCE CENTERS
FISCAL YEAR 1990

1990	Comp.	Benefits	Travel	Trans.	Space Rental	Other	Printing	Expert Services	Contract Services	Supplies	Equipment	Other	Total	1990 Caseload Estimates: Direct Representation	Consulting in Representation	Total
Alabama	$288,625	$35,640	$17,090	$1,900	$0	$79,330	$4,385	$79,000	$12,250	$4,950	$38,760	$16,190	$387,060	8	25	33
Arizona	132,111	32,000	3,467	0	1,333	30,000	6,000	16,332	4,000	2,667	4,001	18,267	222,570	1	30	31
California	774,863	292,532	18,740	400	69,330	33,960	25,220	26,000	60,430	20,590	21,360	206,832	1,492,410	4	103	107
Florida	566,350	111,462	38,320	0	39,900	105,630	12,000	80,000	20,120	29,620	37,200	32,200	1,017,832	2	45	47
Georgia	193,580	35,680	16,580	3,600	36,480	21,720	2,400	40,000	8,400	6,000	31,700	14,100	480,020	5	25	30
Illinois	85,410	18,257	5,400	975	14,820	12,792	975	3,500	4,627	3,120	27,644	3,560	172,345	1	9	10
Kentucky	110,680	23,125	7,000	0	16,200	8,200	0	16,500	0	1,200	19,000	8,000	283,307	4	0	4
Louisiana	104,899	29,589	4,500	0	9,600	11,136	960	28,500	5,000	1,200	6,730	8,000	228,134	4	16	20
Mississippi	170,550	33,915	3,600	600	0	9,300	1,800	40,000	16,100	4,800	16,665	10,500	315,820	6	10	16
Missouri	251,730	48,870	8,500	0	0	13,290	0	13,000	3,000	0	2,000	5,200	308,560	3	49	52
N.Carolina	125,375	26,810	8,230	500	3,345	5,500	2,220	20,125	2,220	1,300	6,500	3,855	286,260	12	8	20
Oklahoma	368,275	64,703	20,000	500	25,803	16,000	1,300	40,000	10,000	4,600	18,600	15,700	606,891	15	12	27
S.Carolina	157,900	28,586	14,460	0	9,200	26,914	6,200	60,220	9,000	4,800	14,900	8,000	331,070	8	7	15
Tennessee	285,175	46,138	8,400	330	28,943	14,040	2,100	30,000	2,300	3,300	16,900	3,930	335,084	4	18	22
Texas	497,911	84,032	58,450	0	58,253	71,830	37,280	95,936	24,343	27,390	27,080	23,200	1,065,880	9	80	89
Total, 1990	$3,908,778	$873,447	$233,277	$8,125	$306,789	$389,640	$103,120	$548,993	$171,919	$112,375	$291,190	$360,553	$7,303,362	86	437	523
1990 Reserved	...	...	...	...	...	...	...	...	...	...	...	...	582,638	...	...	22
Total, 1990	...	...	...	...	...	...	...	...	...	...	...	...	$7,886,000	...	...	545

Summary of Positions -- Fiscal Year 1990**

	Attorneys	Investigators	Paralegals	Secretarys	Total
Alabama	6	1	1	2	10
Arizona	3	...	...	2	5
California	19	...	4	9	32
Florida	6.25	2.5	1	4	13.75
Georgia	5	1	2	2	10
Illinois	3	2	2 (exec. orders)	2	9
Kentucky	2	1	1	2	6
Louisiana	2	...	1	1	4
Mississippi	4	1	...	2	7
Missouri	4	...	1	1	6
N.Carolina	4	...	...	2	6
Oklahoma	12	4	1	6	23
S.Carolina	3	1	1	1	6
Tennessee	4	1	...	3	8
Texas	9	...	1	3	13
Total	86.25	14.5	16	42	158.75

** Since these private organizations operate on sustaining grants and are private organizations rather than agencies of the federal government, their employees are not technically federal employees.

FEDERAL DEFENDER ORGANIZATIONS
DEATH PENALTY HABEAS CORPUS RESOURCE CENTERS
FISCAL YEAR 1991

1991	Comp.	Benefits	Travel	Trans.	Space Rental	Other	Printing	Expert Services	Contract Services	Supplies	Equipment	Other	Total	1991 Caseload Estimates: Direct Representation	Consulting in Representation	Total
Alabama	$201,900	$42,189	$18,550	$4,175	$6,000	$38,050	$5,075	$30,800	$2,250	$5,250	$31,260	$15,050	$400,549	8	30	38
Arizona	184,736	45,448	3,500	0	2,800	12,600	7,350	21,634	4,900	3,150	3,500	8,050	297,668	2	40	42
California	1,024,773	320,754	13,660	510	103,360	46,790	32,180	35,000	72,899	23,870	44,350	208,024	1,926,170	5	123	128
Florida	651,230	139,637	49,760	0	52,920	132,039	14,400	105,120	26,470	28,050	41,860	45,700	1,287,186	2	53	55
Georgia	222,976	40,200	17,400	3,780	22,680	22,806	3,780	63,000	13,410	7,560	9,450	15,330	442,372	9	28	37
Illinois	96,075	11,606	7,790	205	15,580	14,970	1,025	7,660	3,956	2,993	16,810	6,055	184,725	2	13	15
Kentucky	201,710	39,108	12,200	0	22,400	9,800	2,200	23,000	0	2,400	16,000	16,000	344,818	10	0	10
Louisiana	183,854	37,770	5,500	0	9,600	11,856	1,200	35,500	5,500	1,200	6,750	10,000	308,730	5	20	25
Mississippi	205,486	39,042	4,020	700	0	10,540	2,000	45,150	18,025	5,460	14,950	12,045	357,418	6	10	16
Missouri	218,190	50,340	8,500	0	0	13,700	0	13,000	3,000	0	2,250	4,500	313,480	6	52	58
N.Carolina	140,950	32,355	6,150	550	5,345	6,050	2,500	23,100	2,375	1,650	6,600	2,250	229,875	12	16	28
Oklahoma	379,763	87,345	20,000	500	25,815	16,000	1,200	40,000	10,000	6,000	10,000	15,700	612,323	18	12	30
S.Carolina	178,072	32,299	16,275	0	9,200	31,446	7,000	67,375	11,200	7,000	20,875	8,750	389,492	10	8	18
Tennessee	193,373	43,463	6,600	825	19,095	11,551	2,200	32,000	1,870	3,300	6,700	4,950	325,927	10	18	28
Texas	952,273	161,515	125,370	0	116,520	150,746	77,300	206,766	52,160	57,214	195,600	44,760	2,140,224	15	150	165
Total, 1991	$5,035,361	$1,123,071	$315,275	$11,245	$411,315	$528,944	$159,410	$749,105	$228,015	$155,097	$426,955	$417,164	$9,560,957	120	573	693
1991 Reserved	...	...	...	...	...	...	...	...	...	...	...	...	1,975,057	...	...	97
Total, 1991	...	...	...	...	...	...	...	...	...	...	...	...	$11,536,014	...	...	790

Summary of Positions — Fiscal Year 1991**

	Attorneys	Investigators	Paralegals	Secretarys	Total
Alabama	6	1	1	2	10
Arizona	4	...	...	3	7
California	19	...	5	10	34
Florida	7.25	2.5	1	6	16.75
Georgia	6	1	2	2	11
Illinois	3	2	2 (soc.wrkrs)	2	9
Kentucky	4	2	2	2.5	10.5
Louisiana	3	...	1	1	5
Mississippi	4	1	1	2	8
Missouri	4	...	1	1	6
N.Carolina	4	1	...	2	7
Oklahoma	12	4	1	6	23
S.Carolina	3	1	1	2	7
Tennessee	5	1	...	3	9
Texas	18	...	2	6	26
Total	102.25	16.5	20	50.5	189.25

** Since these private organizations operate on sustaining grants and are private organizations rather than agencies of the federal government, their employees are not technically federal employees.

Item 6. Continuing education and training of panel attorneys and federal defenders ($300,000)

The Criminal Justice Act Revision of 1986, which became effective on March 14, 1987, provides authority for the funding of continuing education and training of persons providing representational services under the Act. This authority extends to the training of private panel attorneys as well as Federal Defender personnel.

In the past the training and education of federal public defenders has been provided by the Federal Judicial Center (FJC). The FJC appropriation, however, must provide training for all members and employees of the Federal Judiciary and unanticipated needs for other high priority programs has resulted in a sharp decrease in the availability of funds for Federal Defender organizations.

In fiscal year 1990, by agreement with the FJC, training for the federal defenders and private panel attorneys began to be funded from the Defender Services Appropriation. It is believed that making training funds available in this manner will increase the overall effectiveness of federal defenders and private panel attorneys which is of paramount importance in light of the need for the improvement of advocacy in the federal courts.

It is anticipated that an additional $300,000 will be required to provide this continuing education and training in fiscal year 1991.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

FEES OF JURORS AND COMMISSIONERS

Summary of Requirements

Appropriation 1990 (enacted to date)	$58,700,000
Sequestered pursuant to P. L. 99-177	- 703,000
Budget Authority, 1990	57,997,000
1991 budget estimate	57,997,000
Proposed Increase	.....

Appropriation Language

FEES OF JURORS AND COMMISSIONERS

For fees and expenses of jurors as authorized by 28 U.S.C. 1871 and 1876; compensation of jury commissioners as authorized by 28 U.S.C. 1863; and compensation of commissioners appointed in condemnation cases pursuant to rule 71A(h) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix Rule 71A(h)); [$54,700,000] to remain available until expended: *Provided*, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code[: *Provided further*, That for fiscal year 1990 and hereafter, funds appropriated under this heading shall be available for refreshment of jurors].

$ 57,997,000

FEES OF JURORS AND COMMISSIONERS

FISCAL YEAR 1991
(Dollar amounts in thousands)

Summary of changes:	1991 Request	
	Perm. Pos.	Amount
Appropriation 1990 (enacted to date)	...	$58,700
Sequestered pursuant to P. L. 99-177	...	- 703
Budget Authority, 1990	...	57,997
No increase requested	...	.....
Total appropriation requested, 1991	...	$57,997

FEES OF JURORS AND COMMISSIONERS

Obligations by Activity

(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by Activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Land commissioners	...	$ 200	...	$ 200	...	$ 200	...	$.....
Grand jurors	...	11,745	...	12,100	...	12,100	...	.....
Petit jurors	...	42,052	...	44,100	...	44,100	...	.....
Total obligations	...	53,997	...	56,400	...	56,400	...	.....
Unobligated balance, start of year	...	- 2,400	...	- 6,400	...	- 6,400	...	.....
Unobligated balance, end of year	...	6,400	...	7,997	...	7,997	...	.....
Budget Authority	...	$57,997	...	$57,997	...	$57,997	...	$.....

Object Classification

(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation:			
	Land commissioners	$ 190	$ 190	$ ...
	Jurors	32,408	32,885	+ 477
	Total personnel compensation	32,598	33,075	+ 477
12	Personnel benefits	10	10	...
21	Travel and transportation of persons (jurors)	19,746	21,582	+1,836
23	Communications, utilities, and miscellaneous charges	195	205	+ 10
25	Other services (meals and lodging furnished sequestered jurors)	1,124	1,186	+ 62
26	Supplies and materials (refreshments for jurors)	324	342	+ 18
	Total obligations	$53,997	$56,400	$+2,403

Relation of Obligations to Outlays

(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$53,997	$56,400	$+2,403
Obligated balance, start of year	+2,637	+2,322	- 315
Obligated balance, end of year	-2,322	-2,425	- 103
Outlays	$54,312	$56,297	$+1,985

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	...	...	...
Total compensable work years:			
Full-time equivalent employment	...	...	...

General Statement

This appropriation is for the compensation of jury commissioners and land commissioners and for the fees and allowances of grand and petit jurors, including meals and lodging furnished sequestered jurors and transportation of juries of view. Budgetary requirements depend largely upon the volume and the length of jury trials demanded by parties to both civil and criminal actions and the number of grand juries being convened by the courts at the request of United States Attorneys. For basic statutory authorities, reference is made to the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

Justification of Changes

The sum of $57,997,000 is requested for fiscal year 1991 representing no increase in budget authority over fiscal year 1990.

Obligations for fiscal year 1991 are estimated to be $56,400,000, an increase of $2,403,000 over 1990. Of the total increase requested, $800,000 is required based on increased petit jury activity. An additional $1,603,000 is required for inflationary adjustments. No increase in budget authority will be required, as a result of an unobligated balance of $6,400,000 carried forward from 1990 and available for obligation in 1991.

Land Commissioners

The purpose of a land commissioner is to determine the issue of just compensation arising from the deprivation of private property for public use. Under Rule 71 A(h), of the Federal Rules of Civil Procedure, a district court may in its discretion order "...that, because of the character, location or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it..." Determination of this issue involves the exercise of trial procedures and evidentiary rulings and the referral of a case to such a commission is essentially a delegation of the judicial function and, accordingly, requires close judicial supervision. Because such a commission works outside the presence of the court, actions taken by that commission must be so recorded as to permit a full review by the district or appellate courts, if either party is dissatisfied with the commission's award. Due process of law must be accorded the litigants from the appointment of commissioners to the presentation of their report to the court.

With the adoption of Rule 71 A(h), in April 1951, and until October 1977, the appointment and fixing of fees for land commissioners, though a judicial function, had been administered by the Department of Justice. Congress approved the transfer of this function to the Judiciary in 1978 and language was added to the appropriation "Fees of Jurors and Commissioners" authorizing payment of compensation of land commissioners. This compensation may not exceed the daily equivalent of the highest rate payable under 5 U.S.C. 5332 (currently $299.76). Compensation is payable out of the appropriation "Fees of Jurors and Commissioners" and necessary expenses out of the appropriation "Salaries and Expenses". No increase is projected in land commissioner compensation costs for fiscal year 1991.

Grand Jurors

The number of grand juries impaneled during 1989 totalled 291, 14 less than the number discharged (305), resulting in 448 grand juries as of September 30, 1989. Overall 753 grand juries were in existence at sometime during 1989, compared with 738 in 1988. Sessions to be convened in 1991 and 1990 are estimated to be at approximately the same level.

A total of 208,501 jurors were in session in 1989, a decrease of 585 from 1988. The number of grand juries that are used in each of the district courts varies depending on factors such as the amount and type of criminal activity and the number of places in which court is held. Grand juror activity, which is measured by sessions convened, jurors in session, and total jurors in attendance, have all steadily declined since fiscal year 1984. This is a result of the successful effort by the courts and by U.S. Attorneys to economize on the use of grand juries. It is anticipated that grand juror activity will remain constant during fiscal years 1990 and 1991.

The $355,000 increase requested for grand jurors over 1990 is attributable to the increases in mileage allowance and subsistence rates by GSA and inflationary adjustments in other grand jury expenses. The trend in grand jury activity is shown in the following table.

Fiscal Year	Total Number of Grand Jurors				Hours in Session	Available Jurors		Costs	
	Sessions Convened	Percent Change	Jurors in Session	Percent Change		Jurors	Percent Change	Fees & Expenses	Percent Change
1984	11,885		233,635		62,127	251,070		12,186,786	
1985	11,392	-4.1	225,469	-3.5	60,629	241,135	-4.0	11,878,314	-2.5
1986	11,195	-1.7	222,133	-1.5	60,163	236,936	-1.7	11,583,977	-2.5
1987	11,061	-1.2	216,767	-2.4	59,424	232,233	-2.0	11,557,774	-0.2
1988	10,665	-3.6	209,086	-3.5	57,248	225,148	-3.1	11,172,265	-3.3
1989	10,583	-0.8	208,501	-0.3	57,660	224,888	-0.1	11,782,000	+5.5
Estimates									
1990	10,600	+0.2	210,000	+0.7	57,750	225,000	+0.1	11,745,000	-0.3
1991	10,600	...	210,000	...	57,750	225,000	...	12,100,000	+3.0

Fiscal Year	Average Number of		Total Number of Grand Juries		
	Jurors Per Session	Hours Per Session	In Existence	Impaneled	Discharged
1984	19.7	5.23	759	331	298
1985	19.8	5.32	763	314	291
1986	19.8	5.37	763	295	303
1987	19.6	5.37	754	272	292
1988	19.6	5.37	738	324	270
1989	19.7	5.45	753	291	305

Petit Jurors

The number of available petit jurors during 1989 totalled 812,568, an increase of 7.9 percent over 1988. This figure is projected to increase 2.8 percent in 1990 and an additional 1.8 percent in 1991. Juror trial days were 3.2 percent greater in 1989 over 1988, or from 43,873 to 45,278. Jury trial days are expected to increase 2.7 percent in 1990 over 1989, from 45,278 to 46,500, and an additional 2.2 percent in 1991 (from 46,500 to 47,500).

Petit juror projections for the budget year are based on various data obtained from prior fiscal years. A major factor in this projected increase will be the expected increase in criminal cases of over four percent in both 1990 and 1991. The cost increases in 1991, over 1990, for petit juries are attributable to increased juror activity totaling $800,000 and inflationary adjustments of $1,603,000.

Two major areas have been identified as contributing to the rise in juror costs: (1) increased number of criminal trials; and (2) decreased efficiency in juror usage.

Criminal trials have increased rapidly in the last few years. The number of criminal trials increased by 10.5 percent (3,911 to 4,321) between statistical year (SY) 1987 and calendar year 1988. Criminal juries in most courts are twice as large as civil juries and there are more peremptory challenges. Accordingly, larger panels of prospective jurors are summoned to court. The "war on drugs" contributes disproportionately to jury costs. In FY 88, 9.8 percent of all criminal defendants had jury trials. The trend seems likely to persist in the future. There are two factors which exacerbate the effects of increased criminal trials. A criminal trial, on the average, is marginally longer than a civil trial--by 0.22 days in calendar year 1988. (Neither civil nor criminal jury trials are getting longer than in recent years.) This may not sound like a significant difference, but it becomes noticeable when multiplied by the increase of 400 criminal trials in the last 18 months. The second factor is that there are more multi-defendant trials. (The percentage of multi-defendant trials is staying the same, but the number of these cases is increasing.) In multi-defendant cases, courts may allow the defendants additional peremptory challenges which might necessitate summoning additional prospective jurors.

A second cause which impacts on the increase in jury costs is the number of jurors who report for jury duty, but who are not selected to serve on a jury trial. The percentage of jurors not selected, serving or challenged (NSSC) on the first day of jury service has increased in the last two years and implies decreased efficiency in juror usage.

National Petit Juror Usage
For the Twelve Month Periods Ended September30,19841991

	Jury Trial Days				Available Jurors		Cost	
Year	Criminal	Civil	Total	Percent Change	Jurors	Percent Change	Fees & Expenses	Percent Change
1984. . .	16,478	22,665	39,143		663,651		30,473,353	
1985. . .	17,874	23,649	41,523	+6.1	695,761	+4.8	32,143,359	+5.5
1986. . .	19,543	23,220	42,763	+3.0	714,846	+2.7	32,761,681	+1.9
1987. . .	18,716	25,444	44,160	+3.3	725,227	+1.5	34,084,222	+4.0
1988. . .	18,427	25,446	43,873	-0.6	753,037	+3.8	36,593,080	+7.4
1989. . .	21,832	23,446	45,278	+3.2	812,568	+7.9	40,129,000	+9.7
Estimate								
1990. . .	23,000	23,500	46,500	+2.7	835,000	+2.8	42,052,000	+4.8
1991. . .	24,000	23,500	47,500	+2.2	850,000	+1.8	44,100,000	+4.9

In July 1982, the Administrative Office began collecting "first day" statistics on juror utilization as recommended by the General Accounting Office in its report on juror utilization. Instead of computing the percentages on the basis of all the jurors called into the court, the new statistics concentrate on the jurors called in on the first day for voir dire and exclude the jurors that return for ongoing trials. These "first day" statistics more accurately reflect the courts' juror management practices than the old Juror Utilization Index because they are not distorted by length of trial or variations in jury size. As a result of the change in the method for capturing petit juror statistics, it is not possible to compare current statistics for jurors selected or serving, challenged, or not selected with any statistics published before 1984 by the Administrative Office. The following table represents a comparison of "first day" petit juror statistics:

"First Day" Petit Juror Usage

Fiscal Year	Jurors Present For Voir Dire	Not Selected, Serving, Or Challenged	Percent Not Selected, Serving, Or Challenged
1984	328,815	119,998	36.5
1985	337,802	115,887	34.3
1986	339,129	115,573	34.1
1987	340,139	109,122	32.1
1988	368,001	125,549	34.1
1989	400,740	142,026	35.4

The average percentage of jurors not used on the first day dropped from 36.5 to 34.3 percent, from fiscal year 1984 to 1985, as shown in the table above. This figure continued to fall in 1986, to 34.1 percent and thence to 32.1, in 1987. However, for the first time since March 1984, when the Judicial Conference adopted the 30 percent utilization goal, the average percentage of jurors Not Selected, Serving or Challenged (NSSC) rose from 32.1 in fiscal year 1987 to 35.4 in fiscal year 1989. Although most court's percentages of jurors NSSC are representative of their juror utilization practices, certain aberrations do occur. Notoriety trials and late settlements are the two factors that cause a court's percentage of jurors NSSC, on the first day of jury service, to fluctuate. An increase in the number of criminal trials -- including notoriety trials for which large numbers of jurors have had to be called -- has been appreciable and is the predominate cause of increases in the number of NSSC jurors, for which a one day fee must be paid. The average percentage of jurors not used on the first day has, thus, risen above to what it was in 1985. The objective continues to be improved utilization because of the Judicial Conference directive to all courts to adopt procedures and techniques that will limit the percentage of jurors NSSC on voir dire/orientation day to 30 percent.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

COURT SECURITY

Summary of Requirements

Appropriation 1990 (enacted)	$58,490,000
Sequestered pursuant to P.L. 99-177	- 601,000
Budget Authority, 1990	$57,889,000
1991 Budget estimate	66,583,000
Proposed Increase	8,694,000

Appropriation Language

COURT SECURITY

For necessary expenses, not otherwise provided for, incident to the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress-egress control, inspection of packages, directed security patrols, and other similar activities as authorized by section 1010 of the Judicial Improvement and Access to Justice Act (Public Law 100-702); $43,090,000 to be expended directly or transferred to the United States Marshals Service which shall be responsible for administering elements of the Judicial Security Program consistent with standards or guidelines agreed to by the Director of the Administrative Office of the United States Courts and the Attorney General.

$ 66,583,000

COURT SECURITY
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.		1991 Request Perm. Pos.	1991 Request Amount
	Summary of Changes:		
	Appropriation 1990 (enacted).	23	$58,490
	Sequestered pursuant to P.L. 99-177	...	- 601
	Budget Authority, 1990	...	$57,889
	Adjustments to base and built-in changes:		
8.5	1. Restoration of amount sequestered to appropriation base resulting from the Balanced Budget and Emergency Deficit Control Act of 1985.	...	+ 601
	2. 1990 pay cost increases and other adjustments in compensation:		
8.5	a. Fiscal year 1990 increase for pay costs	...	+ 35
8.5	b. Cost of within-grade salary advancements.	...	+ 8
8.6	3. Increases in contract rates and charges for services, supplies and equipment	...	+ 1,700
8.6	4. Annualization of expenses authorized in fiscal year 1990.	...	+ 3,202
	Subtotal.	...	+ 5,546
	Resources for workload increases and improvements in services:		
8.6	5. Security systems and equipment.	...	+ 3,148
	Total increase requested.	...	+ 8,694
	Total appropriation requested, 1991	23	$66,583

COURT SECURITY

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Court Security	23	$57,889	23	$63,435	23	$66,583	...	$+3,148

Object Classification
(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$ 846	$ 884	$+ 38
12	Personnel benefits	128	133	+ 5
21	Travel and transportation of persons	60	63	+ 3
22	Transportation of things	2	2	...
23	Rental payments to GSA	1,081	1,274	+ 193
	Communications, utilities, and miscellaneous charges	62	65	+ 3
25	Other services	51,494	56,617	+ 5,123
26	Supplies and materials	34	35	+ 1
31	Equipment	4,182	7,510	+ 3,328
	Total	$57,889	$66,583	$+ 8,694

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$57,889	$66,583	$+ 8,694
Obligated balance, start of year	16,633	22,692	+ 6,059
Obligated balance, end of year	-22,692	-26,101	- 3,409
Outlays	$51,830	$63,174	$+11,344

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	23	23	...
Total compensable workyears:			
Full-time equivalent employment	21	23	+2

General Statement

This appropriation provides for the necessary expenses of security and protective services for the United States Courts in courtrooms and adjacent areas, to be transferred to the United States Marshals Service which shall be responsible for administering elements of the Judicial Facility Security Program. For basic statutory authorities, reference is made to the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

In July 1981, at the request of the Chief Justice, the Attorney General formed a Task Force on Court Security. At the March 1982 meeting of the Judicial Conference, the Chief Justice and the Attorney General announced in a Joint Statement the recommendations of the Task Force and the agreement between the Judiciary and the Department of Justice to implement these recommendations. The Attorney General requested and received a Delegation of Procurement Authority from the Administrator of the General Services Administration for the purpose of providing security and protective services. Based on this delegation, the Marshals Service has assumed responsibility for the contracting of guard services and the acquisition and maintenance of security equipment.

The appropriation for court security was established in fiscal year 1983 to fund the program recommended by the Attorney General's Task Force report on court security.

In order to identify the resources necessary to provide an adequate level of security, each district court has established a court security committee composed of the chief judge of the district, clerk of the district court, a United States marshal, a United States attorney, representatives of the bankruptcy court and the circuit court, and a representative of the agency who is responsible for managing the facility. To aid the committee in the establishment of the security requirements for each location, the United States Marshals Service is responsible for providing up-to-date security surveys of each facility.

Justification of Changes

Item 1. Restoration of amount sequestered to appropriation base resulting from the Balanced Budget and Emergency Deficit Control Act of 1985 ($601,000)

In accordance with the sequestration procedures authorized in the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) and Reconciliation Act of 1989 (P.L. 101-239), a reduction of 1.4 percent in non-exempt budget authority was imposed in fiscal year 1990. The sum of $601,000 has been included in this request to restore the sequestered amount to the appropriation base.

Item 2. 1990 pay cost increases and other adjustments in compensation

(a) Fiscal year 1990 increase for pay costs ($35,000)

In accordance with Public Law 101-136, federal employees will receive a 3.6 percent pay increase, effective the first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $35,000. Funding for nine months of the increase was absorbed in fiscal year 1990.

The sum of $35,000 is included for fiscal year 1991, representing the full year cost of the pay increase.

(b) Cost of within-grade salary advancements ($8,000)

All graded personnel who receive a satisfactory performance rating pursuant to the salary plan for Judiciary personnel are entitled to periodic step increases in compensation corresponding with those provided by Chapter 53 of Title 5, United States Code. It is estimated that these salary advancements will cost $8,000 in fiscal year 1991. The estimate is based on past experience and takes into account savings resulting from the turnover of personnel and the filling of vacancies at lower rates of pay.

Item 3. Increases in contract rates and charges for services, supplies and equipment ($1,700,000)

It is estimated that expenses for contractual services, equipment and other miscellaneous expenses will increase approximately 4.3 percent in fiscal year 1991. The sum of $1,700,000 is requested to compensate for inflationary increases above the amount currently available.

Item 4. Annualization of expenses authorized in fiscal year 1990 ($3,202,000)

In fiscal year 1990, 489 additional contract security officer positions were requested. These positions were budgeted for 60 percent of the fiscal year. The sum of $3,202,000 has been included in our fiscal year 1991 request to annualize the cost of these positions.

Item 5. Security systems and equipment ($3,148,000)

It is estimated that the sum of $7,510,000 will be required in fiscal year 1991 for the purchase and installation of security systems and equipment in Federal court facilities. Of this amount, approximately $4,500,000 will be necessary to fund the security systems requirements in GSA renovation and new construction projects. Previously, GSA funded all electrical work on minor projects and security requirements on prospectus projects. It is now GSA policy that the tenant will pay for all "above standard" improvements to space. As these costs have not been segregated in the past, it is difficult to anticipate the impact of this policy change. A review of the GSA list of prospectus projects for the courts for fiscal years 1989 and 1990 identified large projects that will require installation of security systems in fiscal year 1991. Costs associated with installation of security systems for these projects were estimated and included in this budget request.

Listed below are cost estimates for some representative prospectus and renovation projects for 1991.

Los Angeles, CA	$ 348,000
Newark, NJ	397,000
New York, NY	968,000
Alexandria, VA	300,000
Oklahoma City, OK	149,000
St. Croix, VI	150,000
Total	$2,312,000

The remaining $3,010,000 of the $7,510,000 equipment estimate is necessary to continue the nationwide contract with Mosler Corporation for the replacement of antiquated or unreliable security equipment or enhancement of existing systems to meet operational security standards, and to purchase x-ray systems and walk-through metal detectors to establish entrance screening at all court facilities. The Anti-Drug Abuse Act of 1988 includes a prohibition against introduction of firearms and other dangerous weapons into Federal buildings. There are currently 134 court buildings that are not conducting entry screening due to lack of personnel or equipment. Funds are included in this request for the procurement of entry screening security systems needed to ensure compliance with the Anti-Drug Abuse Act.

Mr. SMITH. We have with us Circuit Judge Richard Arnold, Chairman of the Budget Committee of the Judicial Conference of the United States; Judge William G. Young, of the U.S. District Court in Massachusetts; and Mr. Ralph Mecham, Director of the Administrative Office of the U.S. Courts.

How do you want to proceed?

Judge ARNOLD. Mr. Chairman, by your leave, I will make a short statement and then submit myself to questions and discussion.

Mr. SMITH. That would be fine.

Judge ARNOLD. I want to start by saying that we consider it a privilege to appear here again. We know that this committee is knowledgeable about the courts and about our problems and about our efforts to serve the public.

Mr. SMITH. I made sure to get here early today because I knew you would be happy about what happened last year. [Laughter.]

Judge ARNOLD. We are very happy about it, Mr. Chairman, and we know that you were one of our supporters. We are happy about that.

I come before you today for the third time. I am happy to have with me Judge Young, who is a member of the Budget Committee, and, as you have noted, Mr. Mecham. I have a prepared statement, as the committee knows, which has been submitted, and I ask that it be made part of the record without being read.

Mr. SMITH. We will make it part of the record.

Judge ARNOLD. We have come today asking for what is probably a relatively large request in terms of increase as compared to other agencies who come before this committee. I want to assure the Chair, as I did last year, that this request has been subjected to an intensive screening process within the judicial branch. We understand that the Congress is not an unlimited source of all good things, that you have problems and difficulties, and we believe that we should bear our fair share of helping to meet those problems and difficulties. So we have pared down internally our own budget request and are coming before you with what we believe to be the minimum necessary to serve the public in the way that this committee would expect us to do.

Mr. Chairman, the main purpose of my presence here is not to make a speech but to be of assistance to the committee in any way that we can in answering questions. We are ready for that process to begin.

[The statment of Judge Arnold follows:]

STATEMENT OF

RICHARD S. ARNOLD

CHAIRMAN, BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

BEFORE THE SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE, THE JUDICIARY AND OTHER RELATED AGENCIES

FEBRUARY 27, 1990

THE JUDICIARY

PAYMENT TO JUDICIAL OFFICERS' RETIREMENT AND SURVIVORS' ANNUITIES FUNDS

Summary of Requirements

Appropriation 1990 (enacted)	$ 6,500,000
Sequestered pursuant to P.L. 99-177	- 72,000
Budget Authority, 1990	6,428,000
1991 Budget estimate	5,000,000
Proposed Decrease	-1,428,000

Appropriation Language

PAYMENT TO JUDICIAL OFFICERS' RETIREMENT [FUND] AND JUDICIAL SURVIVORS' ANNUITIES FUNDS

For payment to the Judicial Officers' Retirement Fund, as authorized by Public Law 100-659, and to the Judicial Survivors' [Annuity] Annuities Fund, as authorized by Public Law 99-336, [$6,500,000] $5,000,000

PAYMENT TO JUDICIAL OFFICERS' RETIREMENT AND SURVIVORS' ANNUITIES FUNDS
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.		1991 Request	
		Perm. Pos.	Amount
	Summary of Changes:		
	Appropriation 1990 (enacted).	...	$ 6,500
	Sequestered pursuant to P.L. 99-177	...	- 72
	Budget Authority, 1990.	...	$ 6,428
Page No.	**Adjustments to base and built-in changes:**		
11.4	1. Decrease in the payment to Judicial Survivors' Annuities Fund . . .	...	-2,500
11.4	2. Increase in the payment to Judicial Officers' Retirement Fund . . .	...	+1,072
	Subtotal.	...	-1,428
	Total decrease requested	...	-1,428
	Total appropriation requested, 1991	...	$ 5,000

PAYMENT TO JUDICIAL OFFICERS' RETIREMENT AND SURVIVORS' ANNUITIES FUNDS

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent

Comparison by activities:	1990 Appropriation Perm. Pos.	1990 Appropriation Amount	1990 Adjusted (Base for 1991) Perm. Pos.	1990 Adjusted (Base for 1991) Amount	1991 Request Perm. Pos.	1991 Request Amount	Increase 1991 over 1990 as Adjusted Perm. Pos.	Increase 1991 over 1990 as Adjusted Amount
Total obligations	...	$6,428	...	$5,000	...	$5,000	...	$.....
Budget authority	...	$6,428	...	$5,000	...	$5,000	...	$.....

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$6,428	$5,000	$- 1,428
Obligated balance, start of year	.....	.....	.....
Obligated balance, end of year	.....	.....	.....
Outlays	$6,428	$5,000	$- 1,428

General Statement

This appropriation finances annuity payments made to retired bankruptcy judges and magistrates from the Judicial Officers' Retirement Fund, pursuant to Public Law 100-659, and survivor annuity payments made to spouses and dependent children of deceased judicial officers who elected to participate in the Judicial Survivors' Annuities Fund (JSAF), pursuant to section 376 of title 28, United States Code, as amended.

Judicial Officers' Retirement Fund:

Public Law 100-659 was enacted in 1988 to provide bankruptcy judges and magistrates with an acceptable pension upon retirement from judicial service. The previous retirement system for these judicial officers was similar to the one which covers federal employees in which a reasonable pension can be earned only after a full and long career in government service. Most bankruptcy judges and magistrates are appointed mid-career, primarily because the requirements of the judicial office call for experienced attorneys. Therefore, these judicial officers are unable to accumulate the thirty or more years of service necessary to earn an appropriate pension.

Under the provisions of Public Law 100-659, a bankruptcy judge or a magistrate is entitled to an annuity equal to the salary of the position when leaving office, after meeting certain age and service requirements. These requirements are similar to those governing the retirement eligibility of Article III judges, which are set forth under provisions commonly referred to as the "rule of 80." This retirement system for bankruptcy judges and magistrates is a positive factor in attracting and retaining quality individuals which the respective offices demand.

Judicial Survivors' Annuities Fund:

The purpose of JSAF is to provide annuities to widows and dependent children of participants in the Judicial survivors' annuities system. The JSAF was established to receive sums deducted and withheld from salaries of justices, judges, magistrate, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the U.S. Courts who have elected to participate in the program.

Justification of Changes

The request for fiscal year 1991 is $5,000,000. This represents a decrease in budget authority of $1,428,000 compared to the 1990 appropriation. This decrease is based on: 1) a reduction of $2,500,000 in the payment to the Judicial Survivors' Annuities Fund; and 2) an increase of $1,072,000 in the payment to Judicial Officers' Retirement Fund.

Item 1. Decrease in the payment to Judicial Survivors' Annuities Fund ($-2,500,000)

It is anticipated there will be no additional funds required in fiscal year 1991 to finance the JSAF. This determination is based on receipt of a $2,500,000 appropriation in this account in fiscal year 1990 as a payment for the JSAF in conjunction with the latest projections of annuities payable and vested, income to the fund based on account investments, and contributions from participants.

Item 2. Increase in the payment to Judicial Officers' Retirement Fund ($1,072,000)

The sum of $1,072,000 is requested in fiscal year 1991 to fund increased annuity payments to judicial officers. Because of the 25 percent salary increase effective in January 1991, it is estimated that 60 bankruptcy judges and magistrates will retire in fiscal year 1991.

THE JUDICIARY

GENERAL PROVISIONS

Sec. 401. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

Sec. 402. Appropriations made in this title shall be available for salaries and expenses of the Temporary Emergency Court of Appeals authorized by Public Law 92-210 and the Special Court established under the Regional Rail Reorganization Act of 1973, Public Law 93-236.

Sec. 403. Appropriations made in this title which are available for salaries and expenses shall be available, notwithstanding the limitations in 31 U.S.C. section 1345, for the Judicial Conference of the United States to sponsor and host the Fifth International Appellate Judges Conference in the United States, provided that an amount shall be available only if the Appropriations Committees of both Houses of Congress are notified fifteen days in advance of any obligation or expenditure. The Judicial Conference may supplement such appropriations with other funds made available by any department or agency for the purposes of technical foreign aid, educational and cultural programs with the people of foreign countries, or commemorating the bicentennial anniversary of the United States Constitution and the Bill of Rights, provided that any supplementation shall be only for the expenses of the Fifth International Appellate Judges Conference. The Director of the Administrative Office may also accept and utilize gifts of funds, to be deposited as a special deposit account in the Treasury, for the expenses of the Fifth International Appellate Judges Conference for reimbursement of appropriations or direct expenditure, provided that any unexpended balance of the special deposit account shall be returned to the donor or donors. For the purpose of the conference, the Director is authorized to pay for local travel and incidental expenses of foreign participants and dependent members of their immediate household, to pay for per diem to such persons in lieu of subsistence at rates prescribed by the Director, and to conduct and pay for the activities set forth in subsections (1), (2), (9), (15), and (18) of section 804 of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. section 1474). Appropriations for commemorating the bicentennial or for salaries and expenses of the Judiciary shall not be made available by this section for the travel and incidental expenses of dependents. Nothing in this section precludes payment for the travel and other expenses of foreign participants and their dependents by any other department or agency, or by the Director on their behalf, as authorized by law.

Sec. 404. (a) The Judicial Conference shall prescribe reasonable fees, pursuant to section 1913, 1914, 1926, and 1930 of Title 28, United States Code, for collection by the courts under those sections for access to information available through automatic data processing equipment. These fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. The Director, under the direction of the Judicial Conference of the United States, shall prescribe a schedule of reasonable fees for electronic access to information which the Director is required to maintain and make available to the public.

(b) The Judicial Conference and the Director shall transmit each schedule of fees prescribed under paragraph (a) to the Congress at least 30 days before the schedule becomes effective. All fees hereafter collected by the Judiciary under paragraph (a) as a charge for services rendered shall be deposited as offsetting collections to the Judiciary Automation Fund pursuant to 28 U.S.C. section 612 (c) (1) (A) to reimburse expenses incurred in providing these services. **(The Judiciary Appropriations Act, 1990.)**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear here, once again, to present the budget and plead the cause of the U.S. Courts of Appeals, District Courts, and related judicial services for fiscal year 1991.

Mr. Chairman, I am accompanied today by Judge William G. Young of the United States District Court for the District of Massachusetts, a member of the Budget Committee of the Judicial Conference. Members of the Administrative Office are also present.

It seems a very short time since I last came before you to discuss the needs of the Federal Judicial system. Those needs have been handled with great care and understanding by you and your Committee, especially when one considers the budgetary limits within which all of us in government have had to operate. Congress often must make funding decisions with respect to the Judiciary, without the general support or understanding of the public. Mr. Chairman, we know how difficult your job is. The entire Federal Judiciary very much appreciates the support you have given us.

We come before you with a budget, that, to the best of our ability, is tailored to the difficult funding problems of today.

We are asking for $1,935,280,000 for the courts of appeals, district courts, and related judicial services, an increase of $361,706,000 over fiscal year 1990. Apart from the fiscal year 1991 cost of living increase which is normally a supplemental item, our request is slightly less than 20 percent over fiscal year 1990 enacted. Moreover, that 20 percent includes the pay increase for judges scheduled to go into effect at the beginning of calendar year 1991. You will recall that we came in with a similarly reduced request in fiscal year 1990, which was also for an increase of about 20 percent. Our request is a significant reduction from higher estimates of increased needs given to us by the different elements of the Judiciary. Judicial Conference Committee Chairmen have worked well with our Budget Committee to arrive at a minimum figure - one below which we believe substantial harm would be done to court operations. We achieve these reductions, in large part, by deferring expenditures for up to a year or longer. This is particularly true in the case of staffing for increased workload. Rather than bring the needed staff on board during the course of the year as the workload materializes, they are brought on board towards the end of the year. Similarly, purchases of furniture and equipment and other controllable items are often deferred repeatedly, over a period of years.

Although our requested increases are significant, the Judiciary is not a Cadillac operation. Far from it. The ever-increasing workload of the courts more than absorbs any increases in resources. In fact, I believe we are in a constant state of under-staffing and under-funding. But we are striving to get the job done, to make the American system of justice available to everyone, everywhere in the country.

The Automation Program

With last year's funding for automation, your Committee greatly assisted the Judiciary in making a strong commitment to the pursuit of the best possible automated resources, thereby improving the effectiveness of the Federal court system. Great strides are being made in accomplishing the objectives of the Long Range Plan for Automation in the U.S. Courts, as outlined on page 5.85 of the budget justification. The ability of the Judiciary to meet these objectives continues to depend on the availability of a long term stable source of funding. In this respect, we are requesting an increase of $16,733,000 for fiscal year 1991.

In addition, the Judiciary Automation Fund, which you approved last year, is helping to provide the stability and flexibility in funding necessary to make the automation program a success. The Fund will allow the Judiciary to meet the basic automation needs of the courts which have already been identified. Because it operates without fiscal-year limitation, it facilitates long-range planning, procurement, and implementation of systems to replace those that have become obsolete and too expensive to maintain. In this way, the Judiciary keeps abreast of advances in technology, which continue to appear at a remarkable rate.

An area of major importance in the future is providing automated public access to the vast amount of case information which is contained in the courts' automated systems. This information is of great interest and value to the bar, litigants, government officials, commercial enterprises, and the general public. If an automated system of access to this information can be devised, we can better serve the public and free staff people from having to respond personally to inquiries. In addition, the Judiciary is requesting authority to establish reasonable fees for this public access with the proceeds to be deposited into the Judiciary Automation Fund, to defray the cost of providing this service to the public.

Special Masters - First Year of Operations

Over the past year (November 15, 1988 through November 15, 1989), the Office of Special Masters, United States Claims Court, has received 193 vaccine injury filings. Of these 193 cases, 76 have been disposed of. All of the 193 filings save two were retroactive claims, and as of November 15, 1989, the office had 117 pending cases.

The projected workload for the Office of the Special Masters is unclear, as it has been since the beginning of this program. The program was amended by the Omnibus Budget Reconciliation Act of 1989, P.L. No. 101-239, to give the special masters authority to make final decisions subject to limited review by judges of the Claims Court. The amendments also made clear that the government may submit evidence in pending cases in which the government has not yet participated. This will cause a re-opening of the evidentiary record in approximately 50 cases. Finally, petitioners' counsel and government representatives estimate that 500 filings in a fiscal year is a reasonable figure. The last day for filing a claim for compensation due to a pre-October 1, 1988 inoculation is November 15, 1990.

With regard to post-October 1, 1988 inoculations, less than 10 cases have been filed to date. We are still estimating this part of the caseload at 150-220 "awardable" cases per year, with actual case filings at some relatively higher level.

The cost of the program during its first year, which entailed establishing the operation, was $1,052,000. Estimated costs for fiscal years 1990 and 1991 are $1.5 million each year.

Drugs

For 1991, we are estimating that 35 percent of criminal cases filed in District Courts, involving 37,500 defendants, will be drug prosecutions. This is up from 26 percent in 1989 and 32 percent in 1990. During the 1980's, drug cases increased by 229 percent. The rapid increase in drug prosecutions will overwhelm the Federal courts unless sufficient resources are provided. Currently, resources are being diverted from civil to criminal cases because speedy trial laws mandate that criminal cases take priority, and courts of appeals also make a practice of expediting criminal appeals on their dockets, thus threatening to increase greatly the time it takes to decide civil appeals.

The Judiciary estimates that drug-related costs will total $403 million in 1991, an increase of $79 million over the 1990 level. This is a function of anticipated increases in prosecutions. The number of Assistant U.S. Attorney positions increased by 471 in 1989, and will increase by another 800 in 1990. Additional DEA agents are also being hired. This of course means additional workload for the courts, particularly in 1991, when all the new Assistant U.S. Attorneys will have been hired and trained. Included in our request is an increase of $9.25 million to fund the Substance Abuse Treatment program at $28.75 million in 1991. With nearly 18,000 Federal offenders in substance abuse treatment, the program is the largest such criminal justice program in the country.

Advance Approval for Additional Magistrate Positions

Our budget submission this year contains a request for $2,370,000 for six undesignated new magistrate positions and supporting personnel, in addition to 16 new magistrate positions for which workload surveys have been completed and locations approved. Magistrates are the first judicial officers to feel the impact of drug prosecutions. They may also afford the most immediate judicial relief for the drug emergency in the federal courts. The six positions sought will be allocated to those district courts experiencing the largest influx of workload, a significant element of which is drugs. Those locations will be determined at the June 1990 Magistrates Committee meeting at which time Congress will be informed of the reasons supporting the choice of locations.

Budget Decentralization Program

The Budget Decentralization project will complete the third year of the pilot program in September 1990. The five courts participating in the pilot are: Arizona, California (N), Washington (W), New York (S), and the Second Circuit Court of Appeals. An evaluation of the pilot program, being prepared by the National Academy of Public Administration, will be submitted to the Judicial Conference in March 1991, and a decision will then be made with regard to nation-wide expansion of budget decentralization. If approved, expansion would not begin before FY 1992 at the earliest and would take place over at least a two year period.

Budget decentralization encompasses virtually all of the operating expenses of the courts involved, with the exception of judges' and magistrates' salaries and travel expenses and those of their staffs. Each unit within the court (clerk's office, probation office, pretrial services office) prepares an operating budget for each object classification of expense for the forthcoming fiscal year. These budgets are reviewed by the appropriate divisions within the Administrative Office (AO), and budget allocations are provided to the various court units. The pilot project rests on the premise that, given a known funding level and the flexibility to reallocate funds as needed within that level, local managers can effectively support local needs through use of planned savings without needing to request additional funding from the AO.

The ability to prioritize, plan, and reallocate available funds locally provides incentives for the pilot courts to look for cost savings and operational efficiencies. And when resources are tight, local management allows courts to manage the scarcity and use remaining funds according to their own greatest needs. Pilot courts seem happy with this program, and they are showing an ability to respond to emergency needs through the reprogramming of their resources.

Fiscal Year 1990 Supplementals

The Judiciary is proposing a pay-cost supplemental for Article III judges of $5,253,000 and a program supplemental of $22,750,000 to restore anticipated funds that have not materialized because fee collections have not come up to our previous estimates. We had estimated collections of fees for handling registry funds, bankruptcy filing fees, and fees on motions at levels higher than now obtainable. Specifically, fees for handling registry funds were estimated at $21,000,000, and are now estimated at $8,000,000 as the result of reducing the maximum fee from three percent to approximately one percent. The reduction was the result of strong opposition to the three percent fee in the courts and among members of the bar. Bankruptcy filing and motion fee collections were originally estimated at $33,000,000. Collection of these fees, however, could not, by law, begin until at least 30 days after our current appropriation was signed. Current projections are approximately $23,000,000, a shortfall of $10 million. In order to guard against the possibility that our supplemental requests will be delayed or will not be granted at all, we have had to create a reserve of about $22.5 million. This reserve has been created by withholding from immediate expenditure, for the time being, the following funds: $6 million for personnel, $4.5 million for equipment and furniture, $7.8 million for automation equipment and $4 million in space renovations.

Courts of Appeals, District Courts, and Other Judicial Services - Fiscal Year 1991 Request

Our budget request for fiscal year 1991 represents the minimum increase consistent with the growing workload of the courts. For the courts of appeals, district courts, and other judicial services, we are requesting $1,935,280,000 and funding for 24,746 positions, an increase of $361,706,000 and 1,849 positions over fiscal year 1990 enacted.

Increased caseload

During the year ending September 30, 1989, filings with the courts of the United States totaled almost a million cases, specifically 969,725 including appeals, civil, criminal, and bankruptcy cases. On the whole, cases are becoming more complicated. Raw civil filings have dropped since 1984 from 260 thousand that year to 225.7 thousand in 1989. However, if social security and recovery of overpayment cases on student and VA loans, cases which rarely come to trial, are excluded, triable civil cases, a category more indicative of real workload, increased from 186 thousand in 1984 to 201 thousand in 1989. Meanwhile, criminal filings increased in the same period from 37.8 thousand to 46.8 thousand. Appeals also grew significantly from 32.3 thousand in 1984 to 40 thousand in 1989. Since 1984, the number of Article III judgeships in the district courts and the regional courts of appeals has remained the same -- 731.

Dramatic statistical information bearing on the number of drug crimes is revealed in case figures for fiscal year 1989.

From fiscal year 1984, when total criminal filings amounted to 37,829, and drug cases numbered 5,919, these figures rose to 46,828 criminal cases and 12,306 drug cases in fiscal year 1989. During this time the drug cases more than doubled and rose as a percent of criminal cases from 16 to 26. It should also be noted that criminal cases, as a whole, average 1.4 defendants per case while drug cases average 1.9 defendants per case. Many more drug cases are multi-defendant actions.

Cases filed before the courts of appeals rose to 39,927 in fiscal year 1989, compared to 38,345 in fiscal year 1988. Civil appeals from the district courts increased only one percent, while civil appeals from other sources (original proceedings, bankruptcy courts, and administrative agencies) declined by 2 percent in 1989, after increasing 11 percent the year before. A dramatic increase was reported, however, in criminal appeals from the district courts. These appeals rose by almost 2,000 cases to 8,399 this year, a jump of 31 percent. Much of this increase is directly attributable to the new Sentencing Guidelines.

Filings in the bankruptcy courts continued to increase to record levels in 1989. Petitions filed under the Bankruptcy

Code rose to 656,980 this year, up 8.7 percent from a year ago. This continues a steady trend since 1984 and represents an increase of more than 89 percent over a five-year period.

Salaries and Expenses

The Judiciary's fiscal year 1991 request for Salaries and Expenses amounts to $1,643,120,000, an increase of $311,893,000 over fiscal year 1990. Of this increase, $174,390,000 is for uncontrollable adjustments to the base appropriation, $13,130,000 for additional positions of bankruptcy judges and magistrates, $73,545,000 for workload increases, $18,833,000 for improvements in services, and $3,992,000 for the Violent Crime and Drug Initiative.

Salaries of Judges

Under the adjustments to base, we have included $1,370,000 for a reduction in the vacancy rate of active judges from a projected average rate of 36 vacant judgeships in fiscal year 1990 to 23 in fiscal year 1991. In addition, $4,600,000 is an adjustment to base to support an estimated increase of 7 senior retired judges and 2 senior resigned judges in fiscal year 1991.

Relative to program increases for salaries of judges, Mr. Chairman, we are not asking for any additional bankruptcy judges at this time. However, due to increases in bankruptcy workload, we plan to recall five additional judges to assist regular judges in 1991, which with staff will cost $2,060,000.

In the case of magistrates, we are requesting 16 whose locations have already been approved by the Judicial Conference. In addition, as mentioned above, we are requesting six accelerated magistrate positions for six months, which equal, for cost purposes, three full time equivalent positions.

The 16 new magistrates will be located in the numbers and at the locations as follows: two in Brooklyn; two in Los Angeles; two in Miami; and one each at the following locations: New York City; Buffalo; Knoxville; Little Rock; Flagstaff; Watertown, New York; Christiansted, the Virgin Islands; Galveston; Memphis; and Mobile. We note in addition that a new magistrate was sworn in at Des Moines on January [illegible]

Salaries of Supporting Personnel

Also included in this appropriation is the activity "Salaries of Supporting Personnel," in which we seek funds to pay clerks, deputies, probation and pretrial officers, and other support staff. Our request includes the funds necessary to pay 1,827 additional support employees for the courts of appeals, the district courts, and the bankruptcy court.

Deputy Clerks

We have requested significant increases in the number of deputy clerks. Most of these are in the bankruptcy clerks' offices. With the continuing enormous increase in bankruptcy filings, we have no choice but to request your help in this area, if we are to deal effectively with the demands of both business and the consumer. With 118,000 more cases projected for fiscal year 1990 than in 1989, and every reason to believe we will have similar growth in 1991, we would be remiss not to request the extra help necessary to see that these petitions are accorded complete judicial consideration and processing. Of the 871 deputy clerk positions we are requesting, Mr. Chairman, 487 are for the bankruptcy courts.

Workload estimates indicate that we will also need 34 deputy clerks for the courts of appeals and 31 more for the district courts.

In addition to the above, we are requesting 240 clerk positions to support the automation program in the courts, including hardware and software support for the large number of PCs in the courts. Forty positions are requested to operate a fine collection center to meet the requirement of P.L. 100-185 that the Judiciary collect felony fines. Part of the cost of the center, $2.2 million of the projected $3.1 million for fiscal year 1991, will come from fine collections deposited with the Victims of Crime Fund in excess of $125 million. Six additional court interpreter positions are required to reduce increasing costs of contract interpreters, especially as the need continues to rise. Finally, 33 new positions will be required in fiscal year 1991 to handle drug cases resulting from additional U.S. Attorneys brought on board by the Department of Justice in 1989 and 1990.

Probation Services

The three major indices of the probation workload are: (1) number of persons received for supervision during the course of a year; (2) the number of persons under supervision, and (3) the number of investigative reports prepared. All of these are increasing, and there is no foreseeable decline at hand. As I said earlier in this statement, drug-related crimes are increasing at a faster rate than any other category of violations. As a matter of prudent judgment, we can only expect these increases to continue, and thus we must ask for additional positions for the probation service.

We are requesting a total of 718 additional positions, of which 255 are for workload measured by the existing work measurement formula. Of this number, 5 positions are for pretrial services operations in probation offices. Another 11 of these positions are for pretrial services operations conducted in independent pretrial offices.

Home confinement as a condition of supervision is growing dramatically as a less expensive alternative to imprisonment. Eighty-seven more positions are required in 1991 for this purpose. Funding is also requested for an additional 116 probation positions to handle increased workload resulting from the Sentencing Guidelines. This brings to 596 the number of staff required for this purpose in fiscal year 1991 because of the increased complexity involved in preparing presentence reports. Finally, an additional 260 positions are required to handle the increased workload anticipated from drug cases produced by the additional Assistant U.S. Attorneys mentioned above.

National Court Library System

We are requesting 28 positions to continue the development of the National Court Library System, which now consists of 78 libraries staffed with 236 positions. Each circuit's library program is managed by its Court of Appeals and provides on-line information services to all judges, magistrates, and other court personnel. The libraries also provide computer assisted legal research (CALR) to 287 CALR terminals in 237 cities. The additional positions will help the library system meet the ever-increasing demands of judges, magistrates, and court personnel, though staffing will still not be sufficient to obtain maximum benefit from the system. More people are needed to make the library system completely cost-effective and to give the courts the support they could effectively use.

Electronic Court Recording Program

The electronic recording program has expanded more quickly among district judges than originally anticipated. Sixty-one active and 33 senior district judges are now using this equipment to record their proceedings. Many judges find the system a very efficient means of recording court proceedings and preparing transcripts. While our requirements for this technology are growing at a measured pace among judges, we have a new and urgent need for the same technology for magistrates. Because the proceedings before magistrates are becoming rapidly more complex and because of new requirements for transcripts of pre-detention hearings, the total number of transcripts needed for appellate review has increased significantly. We are requesting 50 additional electronic court recorder operator positions for 1991 to cover magistrate proceedings. These positions represent a savings of $900,000 below what the same number of traditional court reporters would cost.

Space and Facilities

The budget estimate for the activity "Space and Facilities" includes an increase of $9,875,000, for a total of $19,735,000, to fund necessary alteration projects in fiscal year 1991. However, we also require $10,000,000 to fund alteration projects which are being deferred in fiscal year 1990 for lack of sufficient funds. GSA is requiring the Judiciary to pay for items normally funded by GSA, such as judges' benches, witness boxes, jury boxes, and chair rails which separate public seating from the judge's bench. For these and other similar items, GSA will require a payment of $13,800,000 in fiscal year 1991 over the $8,000,000 available in the base appropriation. A request for $125,000 is included for contractual services to analyze each judicial district facilities plan, complete plans where courts have not done so, and incorporate the resulting data in Administrative Office databases and housing plans.

Contractual Funding for Probation and Pretrial Services Programs

We are requesting an additional $9,250,000 over the $19,500,000 in the base appropriation for the drug dependent offender program. The demand for the program is growing much faster than the probation service can handle. We expect that the increase in persons receiving drug and alcohol treatment in fiscal year 1991 will be twice as much as the increase in fiscal year 1990.

The Mental Health Treatment program is new in fiscal year 1990. We are requesting an additional $1,125,000 to expand such services, which are provided by community agencies. The base appropriation for mental-health treatment for persons supervised by probation officers in fiscal year 1991 is $375,000. The $4,250,000 request for contractual support for pretrial services saves jail costs, because such services include residential halfway houses, addict and alcoholic treatment centers, and counseling. Such services also reduce jail usage because the judges find it a very desirable way of keeping people out of prison. These services cost money in the budget for the Judiciary, but costs for the U.S. Marshals Service and the Bureau of Prisons are reduced.

The $1,195,000 requested for contractual support for student pretrial services is in addition to the $405,000 currently in the base appropriation. Law and criminal justice students perform limited pretrial services functions such as preparing reports and attending court hearings. The $3,650,000 for contractual support for electronic monitoring is a new program, staffing for which was mentioned above. Home confinement augmented by electronic monitoring will probably permit 1,000 persons to benefit from home detention rather than being in prison in fiscal year 1991. The monitoring device costs about $10 per person per day, which, together with the cost of the probation staff necessary to monitor the program, still represents a saving of 50 percent of the cost of imprisonment.

Child Care Centers

Currently, $375,000 is available in the base appropriation which, when added to our additional request of $1,125,000, will support the establishment of 50 additional day care centers. Appropriated funds are not used for professional services in these centers, but they can be used for equipment, supplies, furniture, utilities and overhead. Employees who use these centers pay for the professional services needed.

Payments for Court Appointed Counsel
to Prosecute Contempt Cases

The majority of contempt proceedings are handled by Department of Justice attorneys. However, for those cases when U.S. attorneys are unavailable because of conflict of interest or otherwise, we are requesting $75,000.

Expansion of Automated Systems

The fiscal year 1991 portion of the courts' Long Range Automation Plan provides for an increase of $14,478,000 for the purchase of equipment and services. A large part of the increased cost is dedicated to the District Court Automation Project, which includes buying new computer systems, upgrading existing systems, and purchasing and installing data communications equipment. Significant increases in expenditures are also called for the Bankruptcy Courts Automation Project, the new probation information system, called Probation Automation Case Tracking System (PACTS), and electronic mail for circuit courts. An additional $1,755,000 will fund 48 more reimbursable positions for the support of automation in the courts. This number will bring the total of reimbursable positions to 212. Finally, 35 positions and $500,000 are requested to augment the staff located at the ADP training centers in Phoenix and San Antonio.

Contractual Financial Audits

The sum of $250,000 is in the base appropriation for the purpose of contracting with auditors from a CPA firm. The request for the additional $300,000 will permit the Judiciary to conduct audits on a two-year cycle, by alternating audits between the Administrative Office Audit Branch and the contract auditors. Currently, the audit cycle for the courts is a little over four years.

Operational Training

The sum of $600,000 is requested for the purpose of training court personnel in the area of contracting and contract monitoring, procurement, voucher examination, accounting, and operating word processors and personal computers. Two hundred thousand dollars is in the base appropriation for this purpose.

Defender Services

Our request for funding of the Defender Services program comes to $167,580,000 for fiscal year 1991. These funds will be used to meet the demand for counsel and investigative, expert, and other services by indigent criminal defendants, and to continue support of death penalty resource centers. The defender caseload continues to rise right along with the increase in general criminal violations, drug-related crime, and the rising need for the services of experienced counsel in habeas corpus death-penalty cases. Counsel must be provided for defendants, or charges might have to be dropped because of the lack of counsel. The criminal statistics cited earlier in this statement show that no reduction in this program is possible.

Fees of Jurors and Commissioners

We are requesting $57,997,000 for fiscal year 1991, which will represent no increase in budget authority over 1990. As you have heard me say before, a failure to provide this funding might necessitate a recommendation for the suspension of jury trials in civil cases, in order to provide funds for criminal trials and grand juries. Such a suspension would certainly produce more litigation, such as that which occurred when the Eighth Circuit enjoined the Director of the Administrative Office and the Ninth Circuit declared the suspension of civil trials unconstitutional after they were briefly suspended in 1986.

Court Security

We are requesting $66,583,000 to fund additional court security officers (CSOs) approved in fiscal year 1990. The increasing number of drug cases and other sensitive trials, such as those involving international terrorism, has created an atmosphere of tension and sometimes real danger in courtrooms.

CSOs employed by the Marshals Service have been an effective force in the maintenance of the secure and deliberative climate that is essential to a court of law. Thousands of weapons have been seized, and some arrests have been made of persons attempting to enter courthouses or courtrooms while carrying arms. The CSOs are a bulwark against the outrages that have been regularly committed in some Third World nations, and which threaten the entire structure of a government of law. The primary mission of the Judicial Facility Security Program, the CSOs, and the security systems and equipment, is to protect the perimeter of court facilities and prevent the unlawful introduction of weapons, explosives, and other dangerous devices into judicial areas.

Conclusion

Mr. Chairman and members of the Subcommittee, I would like to say again that we are deeply grateful for the efforts you all have made and that the Congress as a whole has made to keep the Federal Judiciary in a position to do its job. Our request, even after we have pared it down, remains large, but it is made necessary by our ever growing and uncontrollable caseload. Good faith on our part demands that we spell out the requirements to the Congress.

On behalf of the Budget Committee of the Judicial Conference, we thank you and your Committee for your attention to our needs and for the many considerations with which you have favored us in the past. We are prepared to respond to questions and to any requests for additional information.

Comparative Workload Data
Fiscal Years 1984 and 1989

	FY 1984	FY 1989	%Change
COURTS OF APPEALS			
Filings	32,342	39,927	23.5
Terminations	31,018	37,652	21.4
Pending	23,818	30,674	28.8
DISTRICT COURTS:			
Civil Cases:			
Filed	259,956	225,685	-13.2[1/]
Terminated	251,486	229,943	- 8.6
Pending	251,505	242,746	- 3.5
Criminal Cases:			
Filed	37,829	46,828	23.8
Terminated	36,262	42,933	18.4
Pending	20,882	32,671	56.5
Total:			
Filed	297,785	272,513	- 8.5
Terminated	287,748	272,876	- 5.2
Pending	272,387	275,417	1.1
BANKRUPTCY PETITIONS:			
Filed	346,500	656,980	89.6
Terminated	304,774	588,663	93.1
Pending	591,778	892,670	50.8
MAGISTRATES:			
Criminal Trial Jurisdiction	84,475*	89,051*	5.4
Civil Trial Jurisdiction	3,546*	5,354*	51.0
Preliminary Felony Proceedings	109,337*	155,048*	41.8
Other Criminal and Civil Matters	180,898*	169,258*	- 6.4
PROBATION:			
Received for Supervision	42,456*	46,352*	9.2
Under Supervision, Year-end	63,092*	77,216*	22.4
Pre/Post Sentence Investigations	32,092*	39,645*	23.5
OTHER:			
Petitions for Naturalization	218,616*	285,424*	30.6
Aliens Naturalized	171,750*	236,471*	37.7

*Data for the year ended June 30.

[1/] Includes social security and recovery of overpayment cases on student and VA loans, cases which rarely come to trial and which, if excluded, result in triable civil cases increasing from 186,000 in 1984 to 201,000 in 1989.

SEQUESTRATION

Mr. **Smith**. Well, let's start by mentioning the increase that you received last year that was reduced by sequestration.

Judge **Arnold**. Yes.

Mr. **Smith**. How many dollars did sequestration take away from you?

Judge **Arnold**. Well, it took away—and I'm subject to correction on this—in the neighborhood of $20 million.

Am I correct about that, Mr. Director?

Mr. **Mecham**. I believe it was $18.9 million.

Judge **Arnold**. It was $18.9 million, Mr. Chairman.

Mr. **Smith**. And how are you going to handle that?

Judge **Arnold**. We have handled it by allocating it among the different items that we characterize as controllable. In other words, what that means in general—and I use non-technical terms because that is all I understand—what that means in general is, that if there are new activities or new people to be hired, those are controllable in the sense that the world will not stop if we don't do that. So we take those items and, in proportion to their dollar amount, allocate the sequestration among those items. That is how we handled it.

Mr. **Smith**. Does that include the parole activities, probation activities?

Judge **Arnold**. It includes the probation officers who were to be newly hired. They take their share of the hit, so to speak, along with the other new initiatives of the courts.

PROBATION SERVICES

Mr. **Smith**. Well, I bring them up because it is so obvious that probation services are terribly important in the war on drugs. It seems if there is any way to avoid cutting those services—those kinds of programs need bigger expansions than they got—they shouldn't be hit if there is any way to avoid it.

Judge **Arnold**. Well, I agree with you completely about the importance of those services. For example, we have two studies that show that the more intensive supervision is given to people under supervision, either defendants who haven't been tried yet or people who have been convicted and are on parole or supervised release—the more intensively you can follow those people, the less likely they are to commit new crimes.

Mr. **Smith**. And the less reluctant courts need to be in letting them out on parole; not the courts but the parole commissions need to be in letting them out.

Judge **Arnold**. Well, that is absolutely true. Of course, the extent to which the Parole Commission is active is diminishing each year as the old system phases out.

Mr. **Smith**. Yes.

Judge **Arnold**. But your point is well taken.

JUDICIARY OFFICE BUILDING

Mr. **Smith**. Now, we are talking about building a new judiciary office building. How does this affect your organizations?

Judge **Arnold**. It doesn't affect the courts as such at all. That is to say, no courts will be housed in that building. But it affects us indirectly in a lot of important ways. It will give the Administrative Office and the Federal Judicial Center a place where all of their operations can be housed.

Mr. **Smith**. All of them?

Judge **Arnold**. Yes, sir. That is the intention. We think that will greatly increase the efficiency of the judicial branch. We will also have the Sentencing Commission and the Judicial Panel on Multi-District Litigation in that building, and there will be chambers for retired Supreme Court Justices.

Mr. **Smith**. So all the judiciary organizations will be in that building?

Judge **Arnold**. The Administrative Office, the Federal Judicial Center, the Sentencing Commission. I am trying to think of anything that won't be in it that could be characterized as judicial administration.

Mr. Mecham, can you help out on that?

Mr. **Mecham**. The only one I can think of is the Foreign Intelligence Court. But they have tremendous security problems, and they are well housed in the Justice Department. It would cost a fortune to move them. So except for the Foreign Intelligence Court, I am not aware of any others.

Mr. **Smith**. What is the situation with regard to space for the Appeals Court that is here in the District of Columbia?

Judge **Arnold**. For the D.C. Circuit?

Mr. **Smith**. Yes.

Judge **Arnold**. I don't know, Mr. Chairman. I am not aware of any particular problem in that regard.

Mr. **Mecham**. I think they have no problem currently. They seem to be well housed.

Mr. **Smith**. Well, the district court and the district attorney's office are both having some problems, I understand. We had an agreement. I don't know if it will be implemented, but we had an agreement with FTC that they would work toward vacating that building. The new judiciary office building would be the logical location for some of that kind of activity.

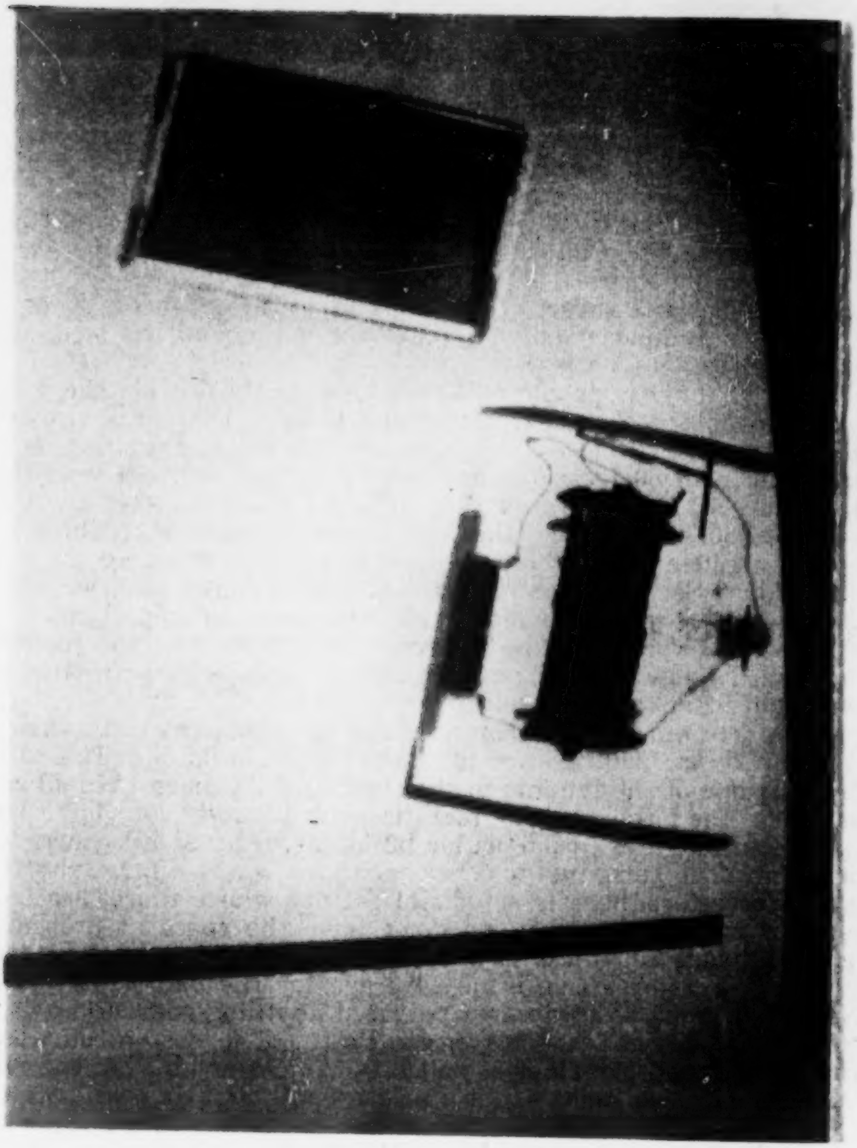
COURT SECURITY

Now, what are you doing to enhance security? What have you got on the plate in that regard?

Judge **Arnold**. Two main things have been done since the tragic murder of Judge Vance, which I can assure the Chair has gotten our attention. We are, in the first place, X-raying everybody's mail. By everybody, I mean judicial officers. I don't get any mail any more, even mail that is addressed to my home, that isn't X-rayed first. All the mail addressed to my home has been rerouted to my chambers, and it is all X-rayed before I get it. This was the marshal's recommendation, and I said to him it seems an overreaction because I may get mail from someone I recognize or it may be a letter that couldn't possibly contain a bomb. His response is: Unless you are an expert in the business, you can't just look at a letter and know what it contains. Bombs can be contained in letters that weigh as little as two ounces.

Now, the X-raying is vital, and I have a photograph with me which, with the Chair's permission, I would like to hand to the clerk. This shows what the X-ray will tell you.

[CLERK'S NOTE.—The photograph follows:]



Judge ARNOLD. That is a photograph of a package that arrived at the office of the clerk of the Court of Appeals for the Eleventh Circuit a day or two after Judge Vance was killed. As you can see, it even looked like a bomb to me. It is a pretty obvious bomb. If that bomb had not been detected and had exploded, it would have killed and seriously injured a whole lot of people in that courthouse in Atlanta. So one of the things that we are doing is to subject all of the mail to an intensive screening process.

The second thing that we are doing in the request is—and this is in the process, Mr. Chairman, we expect that a budget amendment will be coming forward in this regard—to add to our 1991 budget request 279 court security officers who were lopped off when we went through our economy exercise last summer at the meeting of my committee.

Now, what these people will do is essentially provide the officer power to do the X-ray screening and to man the metal detectors and the magnetometers in courthouses. We have something on the order of 70 to 80 locations now where judicial officers work that have no CSO coverage and that have no magnetometer coverage. To give you an example, there is no metal detector in the courthouse in Little Rock where I sit, although two years ago our District Court Security Committee met and decided that we would agree with the marshal's recommendation that we install one.

So I guess those are the two main reactions that the judiciary has had. I know Judge Young has some experience with this, too. He might want to speak to it.

Judge YOUNG. Mr. Chairman, one of the problems in this regard is many court facilities are in multi-tenant buildings. The courts are only one of the tenants in that building. As Judge Arnold says, as you spread the judicial facilities out because you don't have space and facilities in particular buildings to house all courts, you don't have the personnel to cover each area where a judge sits.

In Worcester, there is a judicial facility where there is a court security officer; but since we don't have the space at present to house all judicial offices in that building, when the district court sits in Worcester, there is no coverage for the bankruptcy court. Now, that judge has a distress button if anything goes wrong in his court. That distress button rings in Boston. The Boston court security officers call the chief of police in Worcester on 911. The chief has told us he will make that a priority call, and they will respond from the other end of Main Street, come down to where the bankruptcy judge is sitting, and handle it ahead of domestic violence or other calls that they have.

Mr. SMITH. That is the regular GSA system, right? Is that a GSA building?

Judge YOUNG. It is leased space. That is correct.

Mr. SMITH. GSA handles it.

Judge YOUNG. That is correct. But we have no court security officers there and no other security. It runs through the Marshals Service.

Now, that is not unique. There are many multi-tenant buildings in which there are judicial officers where there is no perimeter security. There have been instances where while there is security for the court facility, say, on the fifth floor—an instance we had in

Springfield, where a person carrying a shotgun was on the first floor and was picked up only because we had a high security trial there and we had extra marshals. As soon as that trial was over, since that was one of the three top security trials in the United States, the marshals left. There are two court security officers on the fifth floor, but there is no security coming in and out of the building, though there is some protection for that floor.

It is not just court security officers, is my simple point. It is how the buildings themselves are laid out and how many different areas we have judicial officers serving in.

Judge ARNOLD. May I make one more point on that, Mr. Chairman?

Mr. SMITH. Yes.

OFF-SITE SECURITY

Judge ARNOLD. One of the things that concerns us is off-site security, off-site meaning outside the courthouse. We have none. Now, we have never considered that we needed it, but we are rethinking that position.

The Marshals Service, which is responsible for security, will not provide and has never provided off-site security unless there is a specific threat. If somebody calls me on the phone and says they are going to kill me, I can call the marshal and he will do something about it. But short of that, they have not been active in this area.

Our Court Security Committee, a committee of the Judicial Conference, had a special meeting on February 16th to discuss this problem. The Conference has not come up with a clear answer to it yet. But, so far, the answer that we have reached at least tentatively is this: It is the responsibility of the Marshals Service to provide protection for the judges. And to the extent that off-site security is needed, they ought to do it.

Now, that is as far as we have gotten in our deliberations on that subject, but it is an ongoing concern for us.

Mr. SMITH. So this $66 million request for court security, is the increase almost entirely for additional personnel?

Judge ARNOLD. The increase is largely for equipment but the amount of the increase was formulated before Judge Vance was killed.

Mr. SMITH. Yes.

Judge ARNOLD. We, I guess like everybody else, want to stay alive, and this has made us rethink that position. We think we are going to request additional court security officers over and above the increase that is before you now.

Judge YOUNG. If I may add, if you are going to do this X-raying, the post office doesn't do that. Most of the court security officers are deployed in perimeter security, protecting the building itself. If you are lucky, some are in reserve if you have a high security trial so that a court security officer can be close by the courtroom. You need more people if you are going to routinely, as they are doing in the Eleventh Circuit now, X-ray all the packages that come into a court facility for the court personnel.

Mr. **Smith**. Give us for the record a breakdown of where these new personnel would be assigned.

Judge **Arnold**. We will do that.

[The information follows:]

ADDITIONAL COURT SECURITY OFFICERS

The following is a breakdown of where the 279 additional court security officer positions will be assigned.

District No.	District	Fiscal year 1991 CSO's
06	AK	2
08	AZ	2
11	N/CA	6
12	C/CA	50
13	CO	4
16	DC	10
19	N/GA	2
26	C/IL	1
31	KS	4
34	E/LA	6
35	W/LA	4
37	MD	1
38	MA	9
40	W/MI	1
42	N/MS	4
46	MT	4
47	NE	1
51	NM	4
52	N/NY	3
53	E/NY	8
54	S/NY	2
56	E/NC	1
58	W/NC	1
60	N/OH	5
61	S/OH	1
62	N/OK	6
63	E/OK	3
64	W/OK	3
66	E/PA	12
67	M/PA	6
68	W/PA	16
69	PR	11
70	RI	2
71	SC	5
74	E/TN	4
75	M/TN	1
76	W/TN	1
77	N/TX	7
79	S/TX	4
80	W/TX	13
81	UT	1
82	VT	3
83	E/VA	19
84	W/VA	1
86	W/WA	11
88	S/WV	2
91	WY	1
93	GU/NM	4
94	VI	6
97	E/CA	1
Total		279

JUDICIARY AUTOMATION FUND

Mr. SMITH. Automation of the courts, how are you covering that program?

Judge ARNOLD. Well, we are going great guns, we think, Mr. Chairman, largely due to the action of the Congress in creating the Judiciary Automation Fund. This has been a great boon to us.

We have been able, for example—and I feel this personally because I now have a word processor in my office, where I never had one before. We think that it is going to be a great increase in efficiency. We have a long-range plan, a five-year plan, which I think has been supplied to the committee. If it hasn't been, we will get it to you right away. It lays out the detail of how this will go over the next five years.

It is essential for the courts to get on board the automation train. We are not going to be able to handle the volume of work that we have to handle without it. And we are well on our way towards doing that.

Mr. SMITH. Mr. Early.

Mr. EARLY. Thank you, Mr. Chairman.

AUTOMATION

Judge Arnold, I want to welcome both you and Judge Young to the committee. What I would like to do is restrict my questions to automation. This member has grave concerns about the justice system. I think it is the most threatening issue facing this country, and I think if there was ever a time for a renaissance, it is right now and the previous couple of years.

I think 90 percent of what we do today with your budget is just a band-aid approach. I think automation is the key. I have been delighted to serve with Chairman Smith; he has been the leading advocate, he and Mr. Rogers, with regard to automation. You said you had a five-year plan. In your long-range automation schedule, you originally had a 1989–1990–1991 plan. With regard to index F-1 on that page, I would like to question you as to what progress has been made and where we are.

[CLERK'S NOTE.—A copy of the FY 1990 Long Range Plan for Automation in the United States Courts is on file with the Committee.]

ELECTRONIC MAIL

I know you have to justify the budget that is submitted, but Mr. Smith and Mr. Rogers went well beyond that in anything that we justified with regard to automation. You talk about security, and you implied to the chairman that all your mail is now screened. Wouldn't electronic mail, if that was implemented and available, wouldn't that reduce an awful lot of the mail that has to be screened?

Judge ARNOLD. Oh, it already has reduced it. I get in my chambers, I don't know—I counted one day how many I got, and I got 45 pieces of electronic mail over the airways from the other members of my court. We also get fax, of course, but just on the electronic mail from the other members of my court and from our court offices cuts down a tremendous amount on the volume of physical Postal Service mail. That is true.

Mr. **Early**. It saves money, never mind the security of electronic mail, in the long run. On the table on F-1, with regards to the budget request for court automation costs, we appropriated $71,376,000. Now, in this budget, it is a five-year program. Originally, it was for three years, and then we included the case-integrated system—and a lot of that equipment is getting outdated now. You are only requesting a $14 million increase. It isn't that it is only $14 million, but since when we are trying to finish this program on a five-year schedule, is this amount going to be adequate?

Judge **Arnold**. We think that it is adequate. There is a more— well, maybe it isn't more detailed. I was about to say there is a more detailed tabulation in our yellow book at pages 5.85 and 5.86. But it seems to be the same thing that you pointed out to me.

The answer is that we think that it is adequate, but let me say this about the $14 million increase here. There actually is other automation money in our budget request. There is a $3.6 million item for additional personnel in the Administrative Office who are directly related to automation and who are serving the courts. So when you add up the numbers, it actually is closer to $20 million than the $14.4 shown here.

Mr. **Early**. Okay. But when the chairman just asked you about the probation support PACTS, which is one of the things that we were going to try to implement, as Chairman Smith and Mr. Rogers are always saying, we just can't give more to judges, if we don't give them support. But to me that seems to be an inadequate amount for what you are trying to do, with the major changes that are coming about in probation.

What did you ask OMB for in these accounts?

Judge **Arnold**. This is exactly what we asked OMB for. They don't change our numbers. By statute, our numbers come directly—well, they come through OMB physically, but the numbers are not changed by OMB.

Mr. **Early**. I never thought they were changed. But I had seen another report, a draft report, that really showed an increase in the 1991 base of $31.9 million. Where is the discrepancy in that, Mr. Mecham?

Mr. **Mecham**. I cannot answer that.

Mr. **Early**. But, as far as the original draft that I had seen.

Judge **Arnold**. I don't know.

Mr. **Early**. Well, do you or one of your staff have the original draft? Because I had always thought both Mr. Rogers and the chairman have always focused in on that, and that they wouldn't reduce your figure. So you are saying that you got exactly what you had submitted to OMB.

Judge **Arnold**. Yes, sir.

[The following information was submitted for the record:]

Reduction in Automation Request

In order to keep the Judiciary's overall fiscal year 1991 budget increase at a reasonable level, each Judicial Conference Committee Chairman was requested to reevaluate his or her 1991 estimates and to make cuts in the levels of projected spending. As a result of this re-evaluation, the Committee on Judicial Improvements reduced its automation budget request by $17.5 million. Originally, the Judiciary had planned to buy expensive mainframe systems to accommodate the needs of the largest courts. $14.7 million of the fiscal year 1991 reduction in cost increases came about as a result of a decision to refocus on the utilization of multiple, powerful but small, UNIX-based systems to meet the courts' needs instead of relying on the larger mainframe equipment originally proposed. The immediate impact of this decision was to reduce cost increases needed to finance the implementation of the BANCAP and PACTS systems in the courts. The remaining amount ($3.1 million) came about as a result of a change in the projected award date for the bankruptcy noticing contract making most of the funds unnecessary in fiscal year 1991.

Mr. **Early**. You are satisfied that these numbers would keep you on track with regard to the five-year plan?

Judge **Arnold**. Well, let me say this: If the Congress determines that more money is available, you wouldn't get any argument out of us. But we are satisfied with our request.

Mr. **Early**. We all know the pinch we are in, but Mr. Rogers and Mr. Smith both realize that automation is the way to go. Our role is to get there as quickly as we can.

On your statement on page 27 for acquisitions to implement the automation, is there money in there for every facet of that?

Judge **Arnold**. Absolutely.

Mr. **Early**. There is?

Judge **Arnold**. Yes, sir.

Mr. **Early**. And it is on schedule?

Judge **Arnold**. It is on schedule.

Mr. **Early**. Okay. Why don't you supply for the record what you would be able to do if you had another $15 million for automation.

Judge **Arnold**. We would be happy to do that.

[The information follows:]

Additional Funding for Automation

If an additional $15 million in funding is made available in fiscal year 1991, the Judiciary will utilize about $1 million to cover unanticipated costs associated with the implementation of the Court Financial System (CFS). The remaining $14 million will be used to accelerate the implementation of the JURIST network and to provide additional office automation equipment to court support personnel.

INTEGRATED CASE MANAGEMENT SYSTEM

Mr. **Early**. Now, the integrated case management system, the ICMS, effort is in two phases. The first phase, called the proof-of-concept phase, involves a feasibility study to determine how best to use the personal computer network technology in the ICMS environment. The proof-of-concept phase is scheduled for completion in the spring of 1990. What is the status of that?

Judge **Arnold**. I don't know, Mr. Early. I would have to find that out for you. There may be somebody here who knows.

Mr. **Mecham**. It is in the Federal Judicial Center budget. They are doing the development on that particular re-engineering study.

PROBATION AUTOMATED CASE TRACKING SYSTEM

Mr. **Early**. I see. And how about on the PACTS, the probation automated case tracking system. I think this is the one we have got to make sure that we expedite. What is the status on this system?

Judge **Arnold**. I will have to defer to somebody for that, also, sir.

Mr. **Early**. It was being tested in southern Florida?

Mr. **Mecham**. We have the assistant director for automation here if Mr. Early would like to raise that question.

Mr. **Early**. Fine.

Mr. **Stoorza**. We are currently pilot testing that software in three probation offices, and we are asking for an additional $2 million in 1991 to allow us to begin expanding out to the probation offices. I believe we have in 1991 given 30 offices all the money; also to connect the PACTS system, which is the name of the probation system, into the criminal system and giving them the advantage of getting to the criminal dockets.

[The following additional information on PACTS was submitted for the record:]

PROBATION AUTOMATION TRACKING SYSTEM

The Probation Automated Case Tracking System (PACTS) is presently being pilot tested in the Southern District of Florida, the Northern District of Ohio, and the Western District of Texas. This system was developed in conjunction with local district representatives as a response to the rapidly expanding information needs of the probation and pretrial services offices. PACTS provides a number of case management functions at the district court level as well as an important on-line query capability. While the pilot court locations are operating PACTS on the district court computer, plans are to move the PACTS operation to powerful UNIX personal computers. The PACTS system has proven useful in replacing outdated manual systems as a means to locate case files and generate reports, thus enhancing overall case management. A significant advantage of PACTS is its general compatibility with already established court automation programs which include full docketing, financial, and fine collection systems. Following pilot testing, the plan is to implement PACTS in the same courts that will be receiving the Criminal electronic docketing systems. Aside from the immediate advantage of the interface with the criminal case data, this approach will facilitate the implementations of the fines center operation. At this time, the PACTS project is on schedule and fully funded in fiscal year 1991.

Mr. **Early**. That is in Texas, Ohio, and Florida?

Mr. **Stoorza**. Yes, sir.

Mr. **Early**. And there is money in here to continue that?

Mr. **Stoorza**. There is money in here. Yes, sir.

Mr. **Early**. What I would like to know: How does this system tie in with the sentencing system; we've got that new supervised release which I told Judge Young if the judges don't do something about that, that is going to go back to the original sentencing judges. Will that tie into that?

Mr. **Stoorza**. Maybe Don Chamlee for the probation office will be better to address that.

Mr. **Chamlee**. Yes, I'm Don Chamlee. I'm chief of the Probation Division. The PACTS system would track all of them so we hopefully will never lose a case. Wherever that person is and however he conducts himself, under supervised release, there will be an opportunity for us to know where he originally came from.

Mr. **Early**. We always assumed that was the case, but it wasn't the case. I know of a case in Massachusetts, which is on the record, where a follow-up case would come in and the guy was sentenced to several years in prison, and he was still in his house after three years waiting to be picked up. This has happened in several places. I think that automation will help correct this problem.

Judge **Young**. Your question, of course, touches on more than automation. We agree with you completely; first, that the goal of automation is not at all simply to give equipment to the judges and their immediate staffs. It is just as important—and, indeed, for the proper functioning of the system to serve the public, probably more important—that this equipment be in the offices of the probation department and in the clerk's office. So the office automation is, in effect, only one-third of it. There is also court automation, and then the data communication, the electronic mail that you spoke of.

It is also true, as the chairman said, that to the extent that funds are sequestered, reserved, or not fully funded for probation, what happens as a practical matter is that supervision of people who are under the supervision of the probation officers, that tends to be deferred in favor of making reports to the judges, because the judges are in the same building and the judges are calling for the reports.

SENTENCING GUIDELINES

Under the Sentencing Guidelines, our data shows that it takes about twice as long now to prepare the reports the judges need to impose the appropriate sentences. So we have to pay attention to how we're staffing the probation offices in order that we continue to have close supervision of those people on probation.

One of the things that the automation will give us is to show how, as we go along with Sentencing Guidelines the Parole Commission will be abolished. As you are quite right to point out, everyone now when they complete their sentence—will be under supervised release. That supervised release, as the Parole Commission goes, will be picked up by the probation officers and ultimately any revocation of the supervised release will come back to the judges, something that is now being done by the Parole Commission.

Because the Sentencing Guidelines are prospective only, about 75 percent of the sentences that are imposed today are under the Sentencing Guidelines. And in the personnel request are some additional probation officers and the like to deal with pretty much getting to a hundred percent under Sentencing Guidelines. Downstream you are going to have additional needs in probation services because you are going to get more people out on supervised release coming under their supervision as the Parole Commission phases out.

Mr. EARLY. Judge, on the long-range plan—and I know because of dealings I have had with Judge Young personally about not only this phase of automation, but computerized courtroom, and I know what you have. But I understand there is a model example of a computerized courtroom in Arizona.

COMPUTERIZED COURTROOM

Judge ARNOLD. Yes, sir. Judge Strand's courtroom in Tucson.

Mr. EARLY. Would you provide for the record just how that operates as far as what are the advantages and disadvantages? And this is my last question: I have been reading about the new construction and the importance of including space for automation. The original typical courthouse was 16,000 square feet, and now New York is suggesting it should be 28,000, et cetera. It is all because of computer equipment. A lot of space is needed because of the hardware. They had one room, 36,128 and another six, et cetera. But I would like to see the Arizona model.

Judge Arnold. We would be happy to provide that.

[The information follows:]

ARIZONA MODEL COURTROOM

The model courtroom in the United States District Court in Phoenix, Arizona is a computer-assisted transcript (CAT) system used by the court reporter to record proceedings and produce transcripts. It was developed by Xscribe Corporation of La Jolla, California and sponsored by the National Shorthand Reporters Association to demonstrate the state-of-the-art in shorthand reporting. This system has been in continual operation since April 1986. Originally, it was referred to as the "Courtroom of the Future." Today, it is referred to as a "Computer-Integrated Courtroom."

This system translates stenographic notes directly into English and displays the text almost simultaneously on video monitors located on the judge's bench and both counsel tables. This allows the court reporter to produce transcripts by using a magnetic stenographic machine linked to a computer.

The court reporter takes down a verbatim account of the proceedings on an Xscribe Stenoram stenograph machine. The stenograph machine is linked to an Xscribe Computer Assisted Transcript (CAT) system. As the reporter keys in information to record the proceedings in the courtroom or chambers, the CAT system which is located in the court reporter's office automatically translates the shorthand symbols into unedited English text. The CAT system then transmits that text almost instantaneously to the video monitors in the courtroom. This application is referred to as "realtime translation." This system has the capability of networking with other computer systems.

The judge has the unedited translation available on the video monitor on the bench. The system also allows the judge to call up prior testimony for review. The attorneys have the unedited transcript available on their video monitors.

The court reporter employs a scopist who serves as an editor in the preparation of the transcripts. The scopist works on the CAT system in the court reporter's office editing text as it is received. The scopist then prints the pages of the final transcript. At the end of the day, the scopist will generally be just a few pages behind the court reporter and can complete the printed transcript in a short period of time.

Advantages of the model courtroom include:

The system saves transcript production time since the court reporter does not have to transcribe stenographic notes or dictate them onto a tape recorder for a typist to transcribe due to realtime translation.

The need for the court reporter to read back from the stenogrpahic notes is eliminated.

Hearing impaired individuals benefit by being able to follow the proceedings by reading the transcript displayed on the monitors.

Critical portions of the proceedings can be reviewed more quickly.

Testimony called into question during the jury's deliberations can be electronically recalled and displayed to the jurors.

The courtroom system allows attorneys to search for names and terms (keywood indexing) rapidly which allows them to compare trial testimony to pretrial discovery.

Transcripts can be provided on ASCI diskettes which allows attorneys and law clerks to use the transcripts on their own computers.

The system is tied to other networks such as WESTLAW, LEXIS, ASSYST, and ABA/NET.

The disadvantages of the system include:

The cost of the system can be prohibitive since individual court reporters must pay for their own equipment. The cost of a system ranges between $25,000 and $55,000. Many court reporters' earnings from the sale of transcripts are insufficient to justify acquiring this equipment and employing a scopist.

Monitors show text that is unedited, that is, spellings, grammar, and syntax may be incorrect and phonetic abbreviations may be displayed.

Some court reporters are apprehensive about having their notes automatically transcribed without the benefit of editing.

The conversion/learning time ranges from 6 to 12 months for court reporters who have never used CAT equipment.

Mr. **Early**. Mr. Chairman, I have other questions that I'd like to ask on the next round. So I will yield back to you.

Mr. **Smith**. All right. Mr. Rogers?

Mr. **Rogers**. Thank you, Mr. Chairman.

Judge, good to see you and the rest of your entourage.

Judge **Arnold**. Good morning, Mr. Rogers.

SEQUESTRATION

Mr. **Rogers**. We stood by helplessly in 1989 as the sequestration feature of reconciliation passed, and the axe fell and cut 1.4 percent in order to reach the Gramm-Rudman targets. And OMB required the agencies to use that post-sequester level as the base for the fiscal 1991 budget across the Government's accounts. But that was the effect of Gramm-Rudman, to slice everybody, not exempt from the Gramm-Rudman cuts or sequestration in an equal proportion. It may have been a failure of the reconciliation process, and that way it is unfair. Nevertheless, that was the way that Congress earlier on in passing Gramm-Rudman determined was the most fair way to achieve budget cuts, having exempted certain safety net programs from those cuts.

Now, you come back in your request for fiscal year 1991, and you have restored those sequestered amounts even for those previous years. It puts us in a bind here because this is a unique relationship we have, you and us. Your request doesn't go through the executive branch. It goes directly to the Congress. It is one branch asking another independent branch for funding, and historically we have treated it almost as a sacrosanct request.

But this really puts us in a bind, because how can we tell everybody else that we appropriate for—the Justice Department and the State Department and the Commerce Department and all these others who suffered their cuts—how can we say to them, well, but the judiciary is so special, we are going to restore its cuts?

It really puts this subcommittee in a bind, and I know the chairman wrestles with that. But how can we justify you getting another bite of the apple when we've told all the others it is not possible.

Judge **Arnold**. Well, I see the problem, and I am not sure that I have a completely satisfactory answer, but my attempt at an answer would lie in the very fact that we are an independent branch of government. There is a reason for that. The framers of the Constitution did it that way because they thought in the long run society would be served. As a consequence of that, as you have pointed out, OMB does not review in a substantive way our budget submission. We deliver the package of papers over there, but they bring it up here intact.

Now, last year, as you may recall, they did make a comment on our budget. They didn't reduce it, in the sense that they could reduce, say, the White House or the Defense Department, but they had a comment to the effect that it was $200,000,000 too large. That is the first time in history that that ever happened. We thought that we had a sufficiently persuasive case of being special that we should take the case directly to Mr. Darman and Mr. Mecham and I went to see Mr. Darman, and told him that we thought that was inappropriate. What I told him was, "I would rather you not comment at all on our budget, unless you are going to ask that it be increased, which seems unlikely."

Well, we had an excellent visit with him, and he agreed with us, and he said, "We should not have done that." Incidentally, it was not done by Mr. Darman, it was done by his predecessor in the last days of the previous administration. He said, "You're right, we should not have done that, and we won't do it again." Now, that seems to me to indicate that in his mind, at least, there is a distinction between us and the executive branch agencies, so what we have done is to come to you with what we honestly think we need, and that includes restoration of the sequestered funds.

I can understand the awkward position that it puts you in, but I can only say that I hope that you will find it in your heart to overcome the awkwardness. [Laughter.]

Mr. ROGERS. Well, I suppose you have done the best you could. [Laughter.]

Judge ARNOLD. If that's a compliment, I accept it. [Laughter.]

Mr. ROGERS. Well, I am tempted to say that, on this issue, that the matter is res judicata, because the Congress, in its infinite wisdom, determined in passing Gramm-Rudman those agencies that would be exempt from the sequestration cuts of Gramm-Rudman. Unless there is a finding by this body, and ultimately the whole Congress, that you should be exempt you should be treated like other agencies, for it does cause us pain to turn to agencies that are hurting as you are for more monies, it really causes us pain to turn to them and say, "well, we are not going to give you more, but we are going to give this other group some more money." So I hope you will appreciate the bind that puts us in when you make that kind of request.

Judge ARNOLD. I take your point. I would only say that, in making the request, we have come to you, and technically, we are not asking to be exempt from sequestration, but what we have done is to come to you with a request for 1991 which is what we think we need to have, and we think that's our duty. If the Congress believes, for reasons of evenhandedness, that it isn't practical to do it, then we—that's your decision to make, but we think it is our duty to come to you with an honest statement of our needs.

FISCAL YEAR 1990 SUPPLEMENTALS

Mr. ROGERS. Let me switch gears now to the supplemental request. You are requesting two things, $5,250,000 for the total 7.7 percent pay raise covering the 1990 portion of that raise, and the fiscal 1991 portion, and second, $22,700,000 to make up for fee-generated funds the court does not now expect to collect this year, apparently.

Judge ARNOLD. Yes.

Mr. ROGERS. You originally anticipated about $61,000,000 in fee collections. In your testimony, you point out that you have created a reserve of $22,500,000, by withholding expenditure of certain costs until it is known whether a supplemental would be forthcoming. I wonder if you could elaborate on that fund, and why you found it necessary to reduce the registry funds fee.

REGISTRY FUND FEE

Judge **Arnold**. I would be glad to. Let me start with the registry fund fee. That, as you will recall, was initiated last year, and what we originally proposed was a fee on the order of 3 percent produced by funds that were on deposit in court registries, both bankruptcy and district courts. It had to be recalled, and I guess the best way for me to put it is to say that we should have thought the proposal out more carefully before we attempted to impose it. After we recalled it and reworked it, we then put a new notice in the Federal Register, that was in May of last year, and the fee was reduced to about 1 percent. Now those collections are running about $500,000 a month, so that particular fee, we think, will produce about $6,000,000 in the current fiscal year.

One of the things that happens when you impose fees, and I guess it proves that economics works, is that the amount of money in the registries goes down. There was about $1,400,000,000 in registry funds when the fee was imposed, and now they are down to $800,000,000. So I think that it simply is a reflection of reality when we come to you and say the $61,000,000 that we thought we were going to collect from fees isn't going to be there, and what we are coming out with is about $38,000,000.

BANKRUPTCY FEES

If I may just make one other point about why that occurred; one of the things that we were authorized to do was impose new bankruptcy fees, and that got started a little late, because under the statute, we were not allowed to do that until 30 days after the appropriations bill was signed. So because of those two factors, the estimates that we expect to get from the fees are less than what they originally thought they would be.

In 1991, we think the registry fee collections will be about $12,000,000, up from $6,000,000 in 1990, but I will have to tell you that I am not supremely confident that that is a correct estimate. That's the best that we can do at this point.

SUPPLEMENTAL REQUEST

Mr. **Rogers**. What I'm really driving at is to find out whether or not you can defer a supplemental request until regular fiscal 1991 appropriation comes around. The pay raise, of course, is a must, or more of a must, but is there a way that you can absorb the costs until the fiscal 1991 bill is written, and not have a supplemental?

Judge **Arnold**. Well, we are not certain. I guess that is the best answer that I can give. It is possible that there will be savings that will enable us prudently to reduce or modify that supplemental request, but looking at it—I guess it was in January or December, when the executive committee of the Conference put the request together—and looking at it today, we think that that supplemental request is the prudent thing for us to do. We understand how difficult supplemental requests are, but we believe that we can make a case for it.

Mr. **Rogers**. Well, what would be the impact, then, of continuing to defer the expenditures until we have addressed the shortfall in the fiscal 1991 bill? What is the impact of that?

RESERVE FUNDS

Judge **Arnold**. I will get you a detailed statement on that, Mr. Rogers, but just generally, the $22,000,000 that is in reserve is distributed among the different—what we call "controllable" items—which basically means new stuff, hiring new people, buying new equipment—controllable, because you can stop doing it without the world coming to an end, so in each of those accounts, there will be a serious impact. For example, there will be people who don't get hired as deputy clerks. There will be people who don't get hired as probation officers, and to the extent that they are not hired, service to the public deteriorates.

What we probably should do is set out for you each of the accounts that are affected by that reserve, and the amounts with regard to those respective accounts, and just give a shorthand summary of what the impact would be of not restoring the reserve.

[The information follows:]

Deferral of Supplemental Request

A deferral of the requested $23 million in the 1990 supplemental would result in the following impact by budget activity in the "Salaries and Expenses" appropriation:

Salaries of Supporting Personnel: $6,000,000.

This shortfall has reduced the number of work years available, slowing hiring plans for clerks' offices (75), probation/pretrial services offices (87), and a proportional amount in other new supporting personnel.

Operation and Maintenance: $5,000,000.

As a result of this shortfall, a pro-rata share of all controllable items has been withheld from obligation. Furniture has again been held to the bare-bones level of 1989, and in fact furniture funding for new positions approved in the 1990 appropriations act is severely limited. Funding for office equipment for new personnel as well as existing staff has also been curtailed below acceptable levels, pending supplemental funding.

Automation: $8,000,000.

Funding would be withheld in additional office automation equipment for probation, law clerks, staff attorneys, librarians, and others; the final 1990 increment of the Appellate Information Management System (New AIMS); part two of the District Court Automation Project (DCAP); and the personal computer users support group.

Space and Facilities: $4,000,000.

Funding for prospectus level tenant alteration projects will not be available for payment to the General Services Administration. Serious project delays will result from the inability to provide funding for these projects, most of which involve courtrooms and chambers for judicial officers.

Total: $23,000,000.

Mr. **Rogers**. All right, that would be appreciated.

Judge **Young**. If I may advance just three examples which are clear from the past history of times when we have been underfunded. In the area of probation services, there is this matter of supervision. You are, in fact, not going to have the supervision of the people who are on probation. There have been districts that have been forced, due to the fact that they do not have enough deputy clerks to keep up simply with the docketing, keeping track of the papers that are filed, to cut down the hours that they are open to the public. That impacts in a disparate way. It impacts those least able to deal with the courts the greatest. The big law firms, the big corporations, can always have someone there, but the smaller people, maybe they can't get there until late in the day, or something like that.

Another problem is that you have some district courts now, in view of the drug caseload, that delay civil trials. We don't manage what our jurisdiction is. Our jurisdiction is set for us by this Congress. There are district courts that sit almost entirely criminal, and their civil caseload, more and more, is being thrown on the magistrates to handle, and we are finding people who are consenting to trials before magistrates, simply because they cannot go to trial before an Article III Judge in any sort of timely way, and those problems increase as underfunding continues.

NEW FEES

Mr. ROGERS. Any strong reaction to any of the other new fees?

Judge ARNOLD. I don't believe so. What would be your answer to that?

Mr. MECHAM. No, they seem to be treated routinely, just the problem of working the kinks out of administration, but no problems.

Mr. ROGERS. Are these having the effect, do you think, of limiting access to the courts in any way—the fees?

Judge ARNOLD. No, sir, I believe not. Most of the fees are imposed on activities. For example, motions for relief from stay in banruptcy, those are things that happen after you get into court, and the people who make those motions are creditors who, as a class, at least, can afford to pay the fee.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. SMITH. Mr. Kolbe.

CASELOAD

Mr. KOLBE. Thank you, Mr. Chairman, Judge. I listened with interest to this discussion this morning, and it seems that everything we have been hearing over the last couple of years would indicate that there is continuing interest in this Congress, and the American people in dealing with the growing problem of drugs in our society, and the increased workload and burden placed on our judicial system. I think all of us share that concern, and all of us realize that that priority is one to which we simply have to adjust. The matter is one that has the highest priority.

What I want to do is ask a couple of questions, somewhat following up on what Mr. Rogers was asking, about the impact of all of this on the other side of your docket, and that is the civil side. I was interested in the article in the Wall Street Journal, which appeared earlier this month, which suggested that the drug cases are crowding out the civil cases in the federal court. This disturbs me, as I'm sure it probably disturbs you. It disturbs me because justice postponed is justice denied. It's a cliche, but I think it is true. People certainly have a right to have justice on their civil cases, on issues that they need to have litigated in the federal court. To the extent that we are postponing these more and more, or perhaps, that we are deferring these to the magistrates, we are not getting the kind of decisionmaking that would allow us to get definitive answers to questions which may have impact elsewhere in the country, or may have ultimate impact as to the appellate process of the United States Supreme Court.

DRUG CASES

I noticed in your own statement, you refer to the fact that drug cases have increased from 26 percent to 32 percent in 1990, and in 1991 you are estimating 35 percent of the criminal cases will be drug cases. You extrapolate that for the total case load. As you suggested in the following sentences of that statement, we are crowding out the civil side of the court load, and we are not getting these appeals decided in a timely fashion. I think of all the other things that Congress has mandated. There is an increasing need for some resolution of environmental cases, and a whole variety of things—we could go on and on—that are not getting resolved. I guess I would like you to tell me a little bit more about the kind of impact that this is having on a day to day basis on the civil side, and what can be done, or what is being done in this 1991 budget to try to address that problem.

CIVIL CASELOAD

Judge ARNOLD. I would be glad to. The statement that you have made is almost verbatim what I would have said if somebody had asked me to start out with a summary of the problem that we are facing. But let me give you, maybe, some more detail to it, or paint in some aspects of it.

There are eight large district courts that are largely out of the civil business now, because of the volume of drug prosecutions. They are becoming, and other courts are becoming, more and more drug courts. Now, we are, in a sense, not complaining about that. That is a task that was imposed on us by Congress. We have to do it. We know that the criminal cases have to take priority.

Mr. KOLBE. Excuse me, can I interrupt?

Judge ARNOLD. Yes.

Mr. KOLBE. These particular ones, I gather, are South Florida, for example. Is that right?

Judge YOUNG. That is one.

Judge ARNOLD. I'll get you a list.

Mr. KOLBE. I would be interested in seeing that.

Judge ARNOLD. Yes. On the appellate level, which is my own experience, we typically meet once a month to hear arguments, and we start in September and go through June. Now, over the summer, a backlog builds up of appeals that haven't been heard yet. In July and August, the briefs come in, and we don't have argument sessions. Incidentally, this summer, we are going to hear argument because of this problem, but last summer, we didn't, so when September came around, and I get the docket sheet in the mail for the arguments, it is like 23 criminal cases out of 25 for that week, and it wasn't until December that an appreciable number of civil cases got set for argument, so it does crowd out the civil litigation.

Another aspect to it is, and I think Judge Young mentioned this a minute ago, to the extent that district judges are taken up with trying criminal felony cases, and they have to do that—magistrates are not authorized and probably couldn't be authorized to try criminal felony cases—to the extent that the district judges are taken up with that, the magistrates are increasingly called—let me rephrase that—litigants increasingly feel pressured to consent to trial before a magistrate.

Mr. KOLBE. If you want to get a case decided, you had better take that route.

Judge ARNOLD. And if consent is freely given, that is all well and good, but if you are pressured into it, if somebody says, "well, you are not going to get this case tried for three years unless you accept a magistrate," then that is a significant problem.

CASE TRACKING

Mr. KOLBE. Do you track the length of time on the court system as a whole for civil litigation—the delays? How has that increased?

Judge ARNOLD. We have detailed numbers on the median time from filing to disposition in both trial and appellate courts for each court throughout the country, and I can supply that for you.

Mr. KOLBE. I would be interested in that detailed information. Do you know, as an averag, through the system, what the increase in the time from date of filing to trial for civil litigation is?

Judge ARNOLD. I don't know the average. I know that in our court it has gone up. We started out with about 6.9 months as a median time for notice of appeal to disposition, and it is up to 9 now, and it will probably be 10 by the time this year is over.

Mr. KOLBE. That is to disposition?

Judge ARNOLD. Yes, sir.

Mr. KOLBE. Are we also significantly reducing the number that are actually being heard in trial?

Judge ARNOLD. Yes, we are reducing the number of cases in which we hear oral arguments. For example, in our particular court, we have always had oral arguments in every criminal appeal, except if you don't have a lawyer, which is extremely rare, and we are probably on the verge of changing that so that we will decide criminal appeals without oral argument. I really hate to see that, but it may be necessary for us to do that in order to prevent the civil appeals, which need to be argued, from being crowded out altogether.

ARBITRATION

Mr. KOLBE. Well, to follow on the last question about how many are not getting to trial, could you give us some data as to how many are going to arbitration, because they can't get a court date set, or trial date set? I would be interested in knowing whether that number has significantly increased.

Judge ARNOLD. We will try to find that for you.

Mr. KOLBE. I would be interested. I have nothing against arbitration, but as you suggest, it needs to be freely decided. People who feel there is a need to have a trial in a case, should not be going to arbitration because there is no other alternative.

Judge ARNOLD. Absolutely.

Mr. KOLBE. Then the judicial system is not serving them.

Judge ARNOLD. Absolutely.

Judge YOUNG. If I may say, there is a subtle pressure in all these——

Mr. KOLBE. Subtle? [Laughter.]

Judge Young. I like to think of it as subtle, and I can't tell you how pleased I am to hear you raise this. There is a real question whether litigants are making their choices with absolute freedom first to go to court, and next, to go to arbitration or to go through these required mediation processes, all of which, of course, raise a civil litigant's fees, because they must attend on the court sessions. A modest effort we started in Massachusetts involves —a "Rent-a-Judge" program as we we have had four out of the twelve judges who have had year-long trials, not all of them drug trials. But a year-long criminal trial, in effect, takes you out of the wheel, the draw of cases.

As to the effect of the drug cases on various districts, which was your original question, and I didn't mean to shake my head so abruptly, the Eastern District of New York, sitting in Brooklyn, is one. It is not just the Southern states.

Mr. Kolbe. Oh, I know. That was the first one that comes to mind.

Judge Young. Right.

Mr. Kolbe. I'm interested in seeing the list.

[The information follows:]

Criminal Versus Civil Cases

During 1989 there were nine districts where criminal trials represented more than 60 percent of all trials conducted. The districts were as follows:

	Percent
California, southern	81.6
Arizona	76.5
Florida, northern	70.4
Alaska	66.7
California, eastern	65.0
North Dakota	64.3
Tennessee, western	61.8
West Virginia, southern	61.0
New Mexico	60.8

In addition to these courts, there were two others where the percentage of total trials was not in excess of 60 percent, but the percentage of trial time was:

	Percent
Florida, southern	67.3
New York, eastern	62.1

There are other districts where individual judges or divisions within the district process virtually no civil cases. In the Southern District of Texas, for example, the judges in Brownsville, Corpus Christi, and McAllen, are trying only criminal cases. The judges in Houston are still able to process some civil cases, but they too may be forced to devote all their time to criminal if the current trend continues.

The median time from answer of a complaint to trial date has been 14 months in each of the last six years. In districts which have a large criminal docket, the median has been much higher. In the districts listed above, the combined median was in excess of 18 months in 1989. In the Southern District of Texas, the median has grown from 19 months in 1985 to 24 months in 1989.

We have no method of ascertaining what portion of the cases going to arbitration are due to this delay. However, in the Eastern District of Pennsylvania which has been offering the arbitration alternative since 1978, the median time of disposition for arbitration is five months as compared with ten months for trial. We feel that the option for more prompt resolution may exert a subtle pressure on the litigant to accept the arbitration alternative.

Judge Young. Here are some of the discreet impacts. The need for larger courtrooms was mentioned; second you have multi-defendant trials in some attempt at economy. The cases are longer, as more sophisticated statutes have been passed, the racketeering statutes, and the like, the money-laundering statutes, so you are not just going after—you are not just enforcing at the lower level. These are more difficult cases to prove. You have, in fact, more trials. Ten percent of criminal cases go to jury trial, 2.5 percent of civil cases go to jury trial. But if all our time is taken up with criminal cases, we never get those settlements that we would otherwise get in civil cases, to compensate the injured worker for example, because these civil cases won't settle until they get to the courthouse steps.

Mr. **KOLBE**. 2.5 percent of civil cases go to trial?

Judge **YOUNG**. Yes, and that has nothing to do with the drug problem.

Mr. **KOLBE**. That figure has been fairly consistent through the years?

Judge **YOUNG**. I believe so.

Judge **ARNOLD**. In the federal courts.

Judge **YOUNG**. Yes, but I think that is not terribly dissimilar from the state courts, as I was a state judge.

Mr. **KOLBE**. I was going to ask that.

Judge **YOUNG**. A very small percentage actually goes to trial. But the interesting thing is the speed with which you can get them to go to trial. Judge Keeton, on our court, who I think is nationally known for his innovations in conferences, and his attempts to get cases resolved short of trial, has demonstrated that the faster the case can be fairly resolved, the better it is for the litigants, because the mere fact that a case sits in court costs people money.

Still, the mores of society are that cases settle on the courthouse steps, which means that you have to have jury sessions, you have to have a session waiting to try the case, only then will the case settle, and 2.5 percent will still go to trial.

Your defender costs are up significantly because of drug-related activities, or at least that is our submission here, and also our need for more magistrates, because not only do we now look to the magistrates to try these consent cases, but your magistrates are your first line of defense for search warrants, for arraignments, for bail hearings. All those things, the intake functions to, in fact, start these criminal cases being processed, are primarily done by magistrates, and that is reflected in these budget requests.

Mr. **KOLBE**. I have a few more questions, but I will wait.

Mr. **SMITH**. Mr. Early, do you have any more questions?

Mr. **EARLY**. I have a number of questions which I will supply for the record, Mr. Chairman. I am just concerned with the automation. Your answer to Mr. Kolbe about these much more difficult cases—the only way you are really going to address them is by automation, isn't it?

Judge **YOUNG**. Absolutely. With automation, you won't cut your number of personnel, but all indications are that we can do more work with the same number of people, and it will grow—either not grow or grow at a lesser rate. That is the only thing.

AUTOMATION

Mr. **Early**. Judge Arnold, for the record, regarding the $7,800,000 that you deferred from your set-aside fund, that you took out of automation, will you explain what it was to be used for, and when you expect to get that back, and how you are going to do it?

Judge **Arnold**. Absolutely.

[The information follows:]

Reserved Automation Funding

The $7.8 million is reserved in the following areas: $1,813,000 is for operational costs such as computer services, office automation maintenance, and ADP supplies; $2,786,000 is for the purchase of hardware to support the installation electronic docketing in the courts; and $3,207,000 is for the purchase of office automation equipment for court support personnel. If the operational funds cannot be restored or absorbed, the Judiciary will need to utilize funds earmarked for the expansion of electronic docketing systems and/or office automation to cover these operational costs. If the remaining funds are not restored, the Judiciary will need to shift implementation priorities to the small courts to save money thus delaying the delivery of electronic docketing systems to the larger courts. Further, the delivery of office automation equipment to the support offices will also be delayed.

Mr. **Early**. I really think, through my good friend Hal Rogers, from Kentucky, those numbers demonstrate the uniqueness of the courts. I mean, if anything has grown faster than most of us have physically, it has been the courts. [Laughter.]

I think it is a service. I really appreciate the cooperation we have received from you, Mr. Smith, and Mr. Rogers.

Judge **Arnold**. Thank you.

SPACE ALTERATION

Mr. **Smith**. You have a very substantial increase in here for space alteration.

Judge **Arnold**. Yes, sir.

Mr. **Smith**. How significant is that? What is causing it? What if you don't get the increase or get only part of it?

Judge **Arnold**. Well, the increase is $33,800,000.

Mr. **Smith**. Yes.

Judge **Arnold**. And I can explain to you how that came about, what the significant elements are—$33,700,000, forgive me. $13,800,000 of it is for large construction projects that Congress has authorized, or is going to authorize, and the timing of that is fixed by GSA, under the peculiar relationship we have with GSA, which incidentally we would like to change, but under that relationship, they decide when these projects are going to be submitted to Congress, and that $13,800,000 is our share of those building projects, so we are, in a way, forced into making that part of our request. $10,000,000 of the request is for projects that we deferred last year.

Mr. **Smith**. On that first part, you are not saying that GSA will go ahead and bill you for that?

Judge **Arnold**. They will not go ahead. Without our share of that construction money, those projects will either be delayed, or will be cancelled.

Mr. **Smith**. Yes, okay.

Judge **Arnold**. The other $10,000,000 that makes up the $33,700,000 or $33,800,000, is accounted for by the fact that we have more than 2,000 more employees now than we had before you approved our 1990 budget. We have new people in probation, pre-trial services, magistrates' offices, clerks' offices. We have 2,165 new positions, which is an 11.5 percent increase in personnel. Now, we needed all of those, and the Congress graciously provided them for us, but they have to have somewhere to sit, to be housed, and so that accounts for about a third of the request in new money for space and facilities.

Mr. **Smith**. Well, you can't automatically increase space everywhere you add someone, can you? I mean, physically, it doesn't work out.

Judge **Arnold**. No, because sometimes we have to put them in other—what happens is that you make do. You put them in rented space, or you put them down the street in some office building.

Mr. **Smith**. Or double up?

Judge **Arnold**. Or you double up, and doubling up reduces efficiency.

Mr. **Smith**. Yes. One more question. We have people who are real excited about new equipment to be used by the probation service. Is that justified?

Judge **Arnold**. Oh, I think that it is. For example, the PCs that the probation people have now, or that they are getting———

Mr. **Smith**. To let people stay at home?

Judge **Arnold** [continuing]. Are absolutely essential for sentencing guidelines.

HOME CONFINEMENT

Mr. **Smith**. No, I'm talking about the equipment so that they can stay at home—electronic monitoring—and things like that.

Judge **Arnold**. Home detention. Yes, we think we can show cost savings in that program. It costs you like $17 to $20 per day for that home detention system to operate, whereas confinement, incarceration costs, are between $35 and $40 per day, not including the capital cost of constructing the prison in the first place.

Mr. **Smith**. We don't have the prisons to start with.

Judge **Arnold**. Yes, sir.

Mr. **Smith**. So that would reduce the number that would have to be released prematurely?

Judge **Arnold**. Absolutely.

Mr. **Smith**. Well, what can we do to get on with this program faster, or can we do anything to speed up this probation service, this monitoring?

ASSET FORFEITURE FUND

Judge **Arnold**. Well, we have in our request what we believe is appropriate for home detention for the next fiscal year. I might mention one aspect of it, which would be of interest, perhaps, although it is not directly within your jurisdiction. There is a thing called the Asset Forfeiture Fund, which is made up of, as the name indicates, money and property that gets forfeited in various kinds of legal proceedings. We receive none of that under existing law.

We are attempting to, and I think the Judicial Conference will approve this, although I can't be certain about that—they are meeting about it next month—but if the proposal that my committee has made to the Conference goes through, supported by the Criminal Law Committee, we will be attempting to get a share of that fund to help defray the home detention costs, and the Department of Justice is cooperating with us, we think, in that regard.

[Additional information on home detention follows:]

IMPLEMENTATION OF HOME DETENTION PROGRAM

The speed of implementation of home detention is predicated on two primary factors: Congressional appropriations and the competitive contracting process. We have requested funding for home detention services for fiscal year 1991. In anticipation of a favorable response from Congress, we have embarked upon an expansion of our two-district pilot study. Funding for the initial expansion will be provided by the Federal Bureau of Prisons. Home detention is currently provided in two probation offices for early parole supervision cases.[1] Each of the participating districts utilizes electronic monitoring services. With the initial Bureau of Prisons funding, home detention will be expanded to 12 new districts. Thus, there will be a total of 14 districts in the expanded program.

The provision of electronic monitorng services will be accomplished by a private contractor who is able to provide the radio frequency hardware and a centralized monitoring facility. The Administrative Office of the United States Courts selects suh a vendor through a competitive process. The typical contracting cycle lasts approximately six months. This includes the preparation of a Request For Proposals to provide the electronic monitoring services and the resultant review and evaluation of proposals. The Administrative Office has selected an Interim Project Manager who is directing the preparation of the RFP and the implementation of the contracting process. Operational guidelines are also being prepared. Contact award and implementation of the expanded pilot study is intended for August, 1990.

All efforts are directed toward the program expansion in as timely a fashion as possible.

Mr. KOLBE. Would the Chairman yield?

Mr. SMITH. Yes.

Mr. KOLBE. That fund now entirely goes to law enforcement agencies?

Judge ARNOLD. It goes to law enforcement agencies.

Mr. KOLBE. They are probably not enthusiastic about this idea?

Judge ARNOLD. Well, I can only say that I went to see Mr. Tom Boyd in the Department of Justice, and I went with Judge Ed Becker, who is on the Third Circuit, and is chairman of our Committee on Criminal Law and Probation Administration. We suggested to Mr. Boyd that it would be appropriate for the courts to share in the fund. He told us that the Attorney General, in principle, was committed to the position that it was appropriate for the courts to share, and we are now in the drafting process of putting on paper a specific proposal to that effect, so we are getting good cooperation from the Department of Justice in that regard.

Mr. ROGERS. Will you yield on this, Mr. Chairman?

Mr. SMITH. That specific proposal to whom?

Judge ARNOLD. To Congress. We hope the Justice Department will join us in proposing a bill that Congress can consider.

Mr. ROGERS. You are not entertaining any thoughts of expropriating portions of those funds, are you?

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[1] We also provide home confinement in one pretrial services office as a condition of pretrial release.

Judge **Arnold**. No. Aside from anything else, I didn't think that it would work. [Laughter.]

Mr. **Early**. Judge, when we speak of the forfeiture fund, wouldn't we be better off just letting that entire forfeiture fund go to the Bureau of Prisons? First of all, you know the criticism that comes when we start going into the forfeiture funds for groups like the courts as far as there is a motivation to capitalize under RICO, to do this, and do that. The prisons are a legitimate expense of all of us, and I think prisons are a part of your expenses, I would like to see the forfeiture fund go entirely to prisons.

Judge **Arnold**. The home detention that we were discussing is an aspect of confinement. It is an alternative to imprisonment.

Mr. **Early**. I would rather give it to the Bureau of Prisons, and let them pass it out. If anything, you people have got too much responsibility now. We give you the vaccines, the numbers you give Mr. Kolbe on the drugs is going out of sight. We should be reducing what sentencing is going to do on supervision, where it is going to be the same thing as parole, Mr. Chairman. We don't call it parole anymore, we call it supervised release. I don't know what the difference is. It is the same guy going out in the street, but we are going to give that responsibility to the judges. You keep telling us about the problems with caseloads—with seven courts having difficulty with civil case business, that is crazy to me.

I certainly wouldn't like to see you get any of the forfeiture fund.

Judge **Arnold**. People who are on probation, or on supervised release, under current law, are not the responsibility of the Bureau of Prisons. They are our responsibility. Now, if Congress chooses to change that, and reduce our responsibilities, I doubt if you would get any big objection from us.

Mr. **Early**. Well, aren't they currently under the parole Commission—which is under you, too, but is under the parole——

Judge **Arnold**. Paroled people, parolees, are under the Parole Commission, but that is phasing out.

Mr. **Early**. Which I think is a mistake, too, not that it makes much difference. But back to that forfeiture fund—I think, Mr. Chairman, I think that does come under you, doesn't it?

Mr. **Smith**. Well, actually, we have to deal with it every year in the end. Originally all the money that was accumulated was going to prisons, and now that is the only kitty that the Drug Czar has. He is a Czar without any money, except for what he gets out of the Asset Forfeture Fund. Have you checked with him?

Judge **Arnold**. Not about the Asset Forfeiture Fund. [Laughter.] I will say that we did go to see Mr. Bennett, Mr. Mecham, Judge Becker and I went to see him, and we got an excellent reception from him. We have a good relationship with him.

ELECTRONIC MONITORING

Mr. **Smith**. Well, I think it is terribly important that we get started with this monitoring approach as fast as we can. I remember back when I was practicing law, if somebody was on probation, all the probation officer had to do was get a complaint from somebody that he was seen in a bar, or even smoking. I mean, smoking a cigarette was enough to throw you off probation. All the probation officer had to do was go to the judge and say this fellow violated his probation, and back into jail he went.

You didn't have the same problems in those days. You can't do that now. We didn't have the problems of probation. It isn't that way today.

Judge YOUNG. Mr. Chairman, in this budget submission, and directly responsive to your question, we would go from two to 12 districts with this program which seems a prudent way to advance it.

One of the things that has happened as both the Federal Government and the States experiment with this, the bracelets themselves get more sophisticated. We are into the second generation of better bracelets because the economic incentive is there. And that seems to us to be—as the committee that deals with it directly—to be a prudent expansion.

We are going ahead with this and——

Mr. SMITH. But you are abandoning obsolete bracelets and going to new ones, aren't you?

Judge YOUNG. Oh, well, I think we would. But the concern is how effective these are.

Mr. SMITH. I see.

Judge YOUNG. There are a few people, but it is probably few that you lose—escape in effect—so we will be ready to go nationwide with it. But the Committee of the Judicial Conference that deals with this recommends, and we pass on to you, an expansion for quality bracelets.

Mr. SMITH. This wasn't a matter of figuring out how much money you could use somewhere else, this is what you think is the right speed with which to go into program?

Judge YOUNG. That's right.

Judge ARNOLD. Well, it doesn't actually save us money. It saves the Bureau of Prisons budget money.

Mr. SMITH. Yes.

ASSET FORFEITURE FUND

Mr. ROGERS. Mr. Chairman, thank you.

On the court's access to the asset forfeiture fund, does that have any problems that worry you about conflicts of interest in those types of cases where assets have been seized and judges are called upon to pass upon the propriety of that seizure? Does that cause you any problems, Judge?

Judge ARNOLD. Well, it doesn't cause me a problem. But I'll have to tell you that some of the judges who are members of the relevant committees have expressed that concern.

And I guess I would say that it is, in my judgment, not a serious concern, for this reason. It is not a case of a judge, as you remember the old case from Ohio where the judge didn't get paid except out of fees that were paid by people that he personally found guilty. That's unconstitutional.

A later Supreme Court case, called Dugan against Ohio, went the other way, where it was simply a system where the fines imposed by the judge and the fees went into a large pot out of which the judge then got paid. And I'll get the citations to those cases for you.

What we are proposing is a lot less direct even than that. In the first place, the draft bill that we have provides that judges' salaries cannot be paid out of any monies that come out of the Asset Forfeiture Fund.

In the second place, there's no one-to-one relationship. A forfeiture made by a judge doesn't, for that reason, go to the courts. It goes into the whole fund, and then out of the Fund, no more than $10 million, or five percent, whichever is less, can go to the courts for their operation.

And the judge who imposes the forfeiture simply has no direct interest in or benefit from that Fund. It is not a lot more direct than the fact that fines that we impose now go into the general treasury out of which our salaries come. It is just almost that indirect.

CRIME VICTIMS FUND

There is also a thing under existing law called a Crime Victims' Fund, into which fines and special assessments of $50 a case go, and the Judiciary gets a share by statute, gets a share of that fund. And that isn't thought to create a serious conflict of interest consideration.

Well, I want to stress again that the Judicial Conference hasn't approved this yet. They may feel the same concerns that you have expressed with respect to conflict of interest. I don't know.

And let me just make one more point about it. When the Budget Committee met last month, my committee, some people expressed the fear that we shouldn't propose this fund, in effect, because it wasn't going to do us any good; that you all, the Appropriations Subcommittee, would know we were getting *x* million dollars out of the fund, and would simply dock us, so to speak, out of appropriated funds to make up for it.

I personally don't think that's the way the process works. But if somebody on this committee should throw up a yellow light and say to us maybe this isn't a good thing for you to do, that would mean a lot to us.

Mr. SMITH. Are you getting any complaints about the confiscation of money that defendants in drug cases would have used for attorneys?

Judge ARNOLD. I should send you my dissenting opinion on that subject, Mr. Chairman. I have personally complained about it.

Mr. SMITH. Why?

Judge ARNOLD. Because if the only money that somebody has to pay a lawyer is seized by the Government before he is found guilty, and without the Government having to show some likelihood that he will be found guilty, it seems to me—and without a hearing at which he can present his side of the case, so to speak, it seems to me——

Mr. SMITH. Like a hearing to show that it didn't come from illegal activities?

Judge ARNOLD. No, sir. No, sir. He does not have that sort of hearing.

This money is seized ex parte, just on the representation of the United States.

Mr. SMITH. Well, the burden shifts to the defendant, but he can come in and get his money released, can't he?

Judge ARNOLD. No. Under existing law, that does not happen. I mean that's exactly part of what my opinion addresses. That does not happen.

You get your hearing when the court tries you for the crime. And if they find you not guilty, you may get the money back. But, in the meantime, you have to go to trial without a lawyer of your own choice.

Mr. SMITH. Well, if somebody robs a bank, you think he would rather use the proceeds out of the robbery to go ahead and——

Judge ARNOLD. Absolutely not. But I think somebody ought to have to show that he did rob the bank before he should be disabled from using that money, or at least a likelihood that he robbed the bank.

Mr. SMITH. Well, what is the difference between robbing a bank and getting a pile of cash, and getting it from illegal drug activity?

Judge ARNOLD. There is not any difference for present purposes. There is no difference at all.

My only point is that money that I have which is presumptively mine should be available for my use unless somebody shows that it isn't mine. And that has not happened yet in these cases in the situation that we are discussing.

In other words, nobody knows that I'm a drug dealer yet because the jury hasn't convicted me. Nobody knows that I robbed a bank.

Mr. SMITH. Are you saying there ought to be a presumption that it was not from illegal activity?

Judge ARNOLD. No, sir. I agree that the burden of proof should shift to the defendant. But I think the defendant ought to have a forum where he can come in and try to——

Mr. SMITH. Prior to the trial?

Judge ARNOLD. Prior to the trial, and try to meet that burden.

Mr. SMITH. That could involve the same issues that will be in the criminal trial then, couldn't it?

Judge ARNOLD. To a very large extent, it does. It's a kind of a preliminary-injunction situation where you would sort of look at the likelihood of success on either side, and, based on that, determine that money could not be used for hiring a lawyer.

Mr. SMITH. Well, if he could show that he had this money before there were allegations dealing that he was in the drug business——

Judge ARNOLD. Yes.

Mr. SMITH [continuing]. If he could show he inherited it, or something, he could get the money released, couldn't he?

Judge ARNOLD. To my knowledge, under the drug forfeiture statute, that procedure is not available.

Mr. SMITH. But, as I understand it now—tell me if I am wrong, I want to know—as I understand it, in these forfeiture cases, they are not trying to forfeit property that wasn't involved in an illegal activity, or they don't have good reason to believe was involved in illegal activity.

Judge ARNOLD. Probably that, yes. That's absolutely right.

The Government thinks that it has good reason to believe it. But that determination is made without considering the defendant's side of it at all.

Mr. SMITH. Now, if you go the other route then, and you wait until after you let him go ahead and use the money to give a million dollars to some law firm, and then you find out that he is guilty, that the money did come as proceeds from drug business, how are you going to get it back?

Judge ARNOLD. You're not. So, all I am suggesting is that you have a kind of a preliminary hearing.

Mr. SMITH. I see.

Judge ARNOLD. Where the government would have to show some likelihood of success. He could come in and show that he inherited it or whatever, that he made it honestly. And then there would be a preliminary determination by the court in advance of the trial. That is what I'm suggesting.

Mr. SMITH. What is happening in these cases where the defendants don't have money other than what is claimed to be obtained by illegal activity?

Judge ARNOLD. The taxpayers are paying for their lawyers. There's a public defender or they're using a panel attorney.

Mr. SMITH. Well, how come there are not lawyers taking the cases and assuming that they will get paid later?

Judge ARNOLD. The lawyers are not doing that.

Mr. SMITH. I see.

Judge ARNOLD. Most lawyers are not doing that.

Mr. ROGERS. Why couldn't you reach this predicament that you believe in by a defendant making a motion to quash the search warrant or quash the seizure, or attacking the seizure of that money directly in a preliminary hearing? Can he not do that?

Judge YOUNG. Because the standard is different. Once the government has probable cause to believe that someone has engaged in drug trafficking, then they can freeze the assets like garnishment or the trustee process we would call it in Massachusetts. They take everybody's—they take all your assets—house, boat, all the cash in whatever account.

Of course, they would have the right to seize under a search warrant anything of evidentiary value. The marked money from the bank is seized if they can catch it before it is converted as evidence.

So, when you attack the search warrant to suppress the use of money in evidence, even if you are successful, even if the search was inappropriate, that does not automatically cause a return of the assets. Since the standard for forfeiture on the civil side is only by a fair preponderance of the evidence, not beyond a reasonable doubt, and, if probable cause exists, the claimant may himself bear the burden of proof, what you are left with is a civil asset forfeiture case, a case which stands in line until after the criminal case is tried. Only then can you try out in court whether you get the money back.

Mr. SMITH. Well, the same thing applies to the equipment used. For example, if we take a boat.

Judge YOUNG. That's correct.

Mr. SMITH. You seize the boat but——

Judge YOUNG. That's correct. If the boat——

Mr. SMITH. You don't think they should return it and allow them to continue to use the boat, do you, while all this is all going on?

I mean somebody robs a bank and he uses a gun, we don't let him keep the gun so he can go out and use it some more while the trial is going on.

Judge **Arnold**. Well, I think the gun and the boat are instrumentalities of the crime. And maybe they are in a little bit different position.

Mr. **Smith**. I see.

Judge **Arnold**. The case that I referred to incidentally is an Iowa case, and it's back in the District Court now. And I don't know what Judge Vietor is going to do with it.

Mr. **Smith**. Well, I tell you I think there a lot of people that really don't understand how it works, including lawyers.

I mean, when you first hear it, you say, oh, that's terrible. They took this guy's money and wouldn't let him hire a lawyer. And they don't get into the aspect of whether or not it was illegal activity that was involved.

Judge **Arnold**. Yes.

Mr. **Smith**. And how it compares with bank robberies and other things.

Mr. Kolbe, do you have another question?

JUDGESHIP VACANCIES

Mr. **Kolbe**. Yes, Mr. Chairman. Thank you.

I wanted to follow up on a couple of other things we started on before.

We had an authorized number of 575 position for judges for at least five years now.

Is your conference considering recommending any increase in that?

Judge **Arnold**. We have a request in and have had for two years for 63, I think it is.

Mr. **Mecham**. It is now 75.

Judge **Arnold**. Seventy-five more judges? They are not all District Judges, isn't that right? I think 14 Circuit Judges and 61 District Judges.

The last time I asked, nobody had introduced a bill to create those judgeships yet. We would like to have them.

Mr. **Kolbe**. I notice in your statement this year that you are projecting on part of your salaries a reduction in the number of vacant judgeships from 36 to 23 in 1991.

Is that because of pay increases, you would estimate less people, less vacancies?

Judge **Arnold**. No, sir. I think it's primarily because the nomination and confirmation process always seems to be slower at the beginning of an administration. And as they get into it, it speeds up.

Mr. **Kolbe**. How many vacancies do we have at this time, do you know?

Judge **Arnold**. We have 49, isn't it?

Mr. **Mecham**. I think it's 63 now.

Judge **Arnold**. Sixty-three.

Mr. **Mecham**. It's going up.

Judge **Arnold**. All right. We have 63 vacancies. Four people have been confirmed, and there are 14 or 16 nominations before the Senate.

Mr. **Kolbe**. Sounds to me like you're going to have trouble getting down to the rate of 36 for this, aren't you?

Judge **Arnold**. Well, we may have, we may have trouble getting down to it.

Mr. **Kolbe**. So, as bad as that is that is a plus on the budget side, isn't it?

Judge **Arnold**. That's correct, it would be.

Mr. **Kolbe**. Do you really think 23, given the number you have right now as an average, is reasonable in 1991?

Judge **Arnold**. Well, it's the best we could come up with at this point. But it may be on the low side.

Mr. **Kolbe**. We heard for a number of years about the concern about the ability to attract good people to serve on the Judiciary, a concern that I share.

JUDGES' PAY RAISE

Would you share your view of the changes made on pay levels last year, and what effect that will have?

Judge **Arnold**. It is a very favorable signal. I mean it says to the public and to prospective judges, we think you are important.

Mr. **Kolbe**. And value your work.

Judge **Arnold**. And that is valuable to those of us who are sitting now over and above the money, which we do not scorn. [Laughter.]

But it is a very favorable signal. And I think it will have quite a beneficial effect on the quality of justice in the long run.

Mr. **Kolbe**. Well, I suspect most members of Congress would probably concur with that. But I am not sure if the American public would concur with either the Congress or the Judiciary, that they welcome this as a sign of the value of the work that we do.

Well, finally, Mr. Chairman, I would like to ask if you are anticipating any strain being placed on the system, either the criminal or the civil system, as a result of the legislation regarding the S&L bail-out, and the provision for additional funds for the Justice Department to investigate more of those cases. I think we have $50 million for criminal cases and $25 million for civil cases. What effect is this going to have?

Judge **Arnold**. Well, there is no question about it. I mean every time you hire *x* number of new Assistant United States Attorneys, they produce criminal prosecutions. And there is also a tremendous civil litigation fallout.

Another aspect of that statute, which I am told is called FIRREA by those who practice law in that area, is that it increases the jurisdiction of the Courts of Appeals, which I learned because I had a case pending when the statute became law. And I had to go back and withdraw the opinion and file a new one.

It gives us jurisdiction over orders of remand to State courts. If it is an S&L dispute which started out in State court, and somebody removes it, typically the FSLIC or the FDIC removes it to the Federal Court, the Federal Court may decide it ought not to be here, and remand it to the State court.

Under the previous law, that was the end of that. You could not appeal that.

Mr. KOLBE. It is now an appealable decision?

Judge ARNOLD. It is now an appealable decision.

Mr. KOLBE. Would it be like them to pick several of those appeals.

Judge ARNOLD. I believe we will have several. I have got one right now.

Mr. KOLBE. Thank you, Mr. Chairman.

Mr. SMITH. Okay. Thank you.

[The following questions were submitted to be answered for the record:]

QUESTIONS SUBMITTED BY MR. SMITH

COURT OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

New Judiciary Office Building

QUESTION:

Has the Judicial Conference decided which Judiciary organizations will be housed in the new Judiciary Office Building? If so, describe them briefly and for the record list the organizations, their planned personnel levels, and the amount of square feet that will be provided.

ANSWER:

The Administrative Office, Federal Judicial Center, United States Sentencing Commission, Judicial Panel on Multidistrict Litigation, and retired Supreme Court Justices with projected staffing of 1,140 will be housed in the new building.

An increase of 5 percent per year was used as a planning figure where no program was available. Exact square footage has not been determined since the building is just approaching final design. We are planning on 150 square feet working area for non-supervisory professionals, less for support staff (as low as 90 square feet), and more for supervisory personnel. We expect definitive numbers on useable space, and space per person in the next two to three months.

QUESTION:

We understand that current plans call for the Judiciary to utilize only two thirds of the building. Is this true?

ANSWER:

Currently, we are planning to use 60 to 75 percent of the building. However, these percentages are subject to definitions and treatment of common use space, and building support space which can vary the percentage appreciably.

QUESTION:

Has any consideration been given to allow the Judiciary functions, such as the Claims Court to utilize the excess space that is currently to be offered to Executive branch agencies?

During earlier hearings, remarks were made concerning the high rent currently being paid in downtown Washington, D. C. by some of the Courts. One example is the Court of Appeals for the Federal Circuit. Would there not be a savings to the Judiciary by consolidating as many Court functions as possible into the new building.

ANSWER:

From the beginning, the Judiciary Office Building has been developed to house the support elements of the Federal courts, and not the courts themselves. This has resulted in a design calculated to maximize the efficiency of the building in the context of office space. This has been done, for example, by planning on 20 foot bays-the distance between columns thereby reducing the distance between floors. This, in turn, allows the maximum number of floors within the urban planning restrictions on the total height of the building. With two exceptions, such as the first floor below grade and the ground level, all floors are ten feet slab-to-slab and cannot be used for courtrooms. The ground floor's 12 foot height is also inadequate for courtrooms.

In summary, the building, has been designed as an office building and not a courthouse.

As you have noted, the Court of Appeals for the Federal Circuit is being charged a high annual rate for office space by GSA in their location in the National Courts Building. The budget estimate for FY 1991 provided by GSA was $40 per square foot for office space, whereas a block away the Administrative Office is paying $26 per square foot for office space. The cost of GSA rental in FY 1991 represents 31 percent of the Court's total budget request, which appears to be excessive.

Fees

QUESTION:

You have submitted a supplemental appropriation request of $22,750,000 for FY 1990 to make up for a projected shortfall in fee collections. Is this still your current estimate for fee shortfalls?

ANSWER:

Fee collections are estimated to be approximately $38 million, $23 million short of the $61 million provided by the appropriations act. However, the estimates are still tentative. The bankruptcy fees became effective only in December and January, and insufficient data is available to make reliable estimates. In addition, deposits to the Registry Fund have shown a steady decline over the last few quarters; our estimates may be too optimistic. Therefore, the $22,750,000 included in the supplemental is still required.

QUESTION:

Are there any other areas of the Courts experiencing surpluses which may negate or lessen the need for the 1990 supplemental? For example, is the current vacancy rate for judgeships higher than you originally projected for FY 1990?

ANSWER:

The only area where there may be a surplus relates to the higher than anticipated vacancy rate for judgeships. However, because our estimated fee collections may be overstated, any surpluses in personnel compensation and benefits will be required to offset this deficiency.

QUESTION:

In your fiscal year 1990 appropriation, the Congress assumed that the Courts would collect a total of $61,000,000 in fees to offset Court expenses. For the record, please list, by type of fee, the 1990 appropriation estimate, current 1990 projections and 1991 estimates. Please explain any changes of + or - ten percent.

ANSWER:

A table and explanation of changes are provided below.

Fee	1990 Approp. Estimate	1990 Projected	Percent Change	1991 Estimate	Percent Change
Bankruptcy Noticing	$[3,500]	$[4,250]	+ 21%	$[4,100]	- 1%
Civil Filing	7,000	7,000	0%	7,500	+ 7%
Registry Admin.	21,000	6,000	- 71%	12,000	+100%
Bankruptcy Filing	22,000	16,500	- 25%	22,000	+ 33%
Automatic Stay	11,000	8,360	- 24%	11,000	+ 32%
Total	$61,000	$37,860	- 40%	$52,500	+ 39%

Registry Administration: The current estimate is based on a reduction in the handling fee and a decrease in the level of funds deposited in the courts' registry. Based on collections thus far in fiscal year 1990, the 1991 estimates may be overstated.

Bankruptcy Filing/Automatic Stay: Pursuant to the general provisions of the 1990 appropriations act, these fees became effective on December 21, 1989. Consequently, the current 1990 projections reflect only nine months of collections rather than 12 months as reflected in the 1990 and 1991 estimates.

Judicial Security

QUESTION:

You request an increase of $3,148,000 for a total of $7,510,000 for security systems and equipment. Will this complete your procurement of updated entry screening security systems for existing Court facilities that require them?

ANSWER:

Of the total $7,510,000 requested in FY 1991 for equipment, approximately $4,500,000 is needed for General Services Administration (GSA) renovations and construction projects. The remaining $3,010,000 is necessary to continue the nationwide contract with the Mosler Corporation to replace antiquated or unreliable security equipment. This increase should complete the required procurement of updated entry screening security systems for existing Court facilities.

Pay Raises

QUESTION:

What is the estimated cost of the executive level pay raise for the salaries of Judges for FY 1991 and have you budgeted for the full amount?

ANSWER:

Our request includes a 25% pay cost increase for judges for nine months of fiscal year 1991 in the amount of $33,000,000, an increase of $20,255,000 for Article III judges and $12,745,000 for bankruptcy judges and magistrates.

QUESTION:

Are other executive level employees of the Judiciary eligible for this pay raise and, if so, what will be the cost over FY 1990, and have you budgeted for this amount?

ANSWER:

We have requested the amount of $4,800,000 to implement a salary plan for increasing the salaries of executive level employees such as clerks of courts, probation officers, and pretrial officers as a result of the executive pay plan. This amount would provide for nine months of a pay increase of 25% up to the Executive Level V cap of $97,800.

QUESTION:

For the record, please provide projected pay costs for FY 1990 and 1991, as follows:

ANSWER:

	Compensation of Judges ($000's)	Compensation of Other Court Pers ($000's)	Personnel Expenses ($000's)
1989 ACTUAL	125,891	652,308	778,199
Annualize 1989 new positions	5,077 (1)	12,434 (1)	17,511 (1)
1990 new positions	0	31,965	31,965
1989 pay raises	110 (2)	24,000 (2)	24,110 (2)
1990 pay raises	5,253	0	5,253
1990 ESTIMATES	136,331	720,707	857,038
Annualize 1990 new positions	8,265 (3)	46,863 (3)	55,128 (3)
1991 new positions	1,825	18,917	20,742
1990 pay raises	4,150	23,200	27,350
1991 pay raises	33,000	22,300	55,300
1991 ESTIMATES	183,571	831,987	1,015,558

Notes:

(1) There were no FY 1989 new positions to annualize in FY 1990. The costs shown are related to salary advancements, FERS and health benefits cost adjustments, etc.

(2) The full cost of the FY 1989 pay cost increase is shown. However, 75% of the cost was absorbed.

(3) This amount includes annualization of FY 1990 new positions and increases such as salary advancement, FERS and health benefits cost adjustments, etc.

No Year Funds

QUESTION:

It has come to the attention of the Committee that the Court's S&E account has been carrying forward unobligated balances of up to $39 million from one fiscal year to the next. Since this account is a one-year appropriation, under what authority do you carryover these unobligated balances?

ANSWER:

The referenced $39 million was not a carryover of unobligated balances in the S&E account, it was a transfer of funds from the Defender Services account. Public Law 101-145, the Dire Emergency Supplemental Appropriations Act for Fiscal year 1989, authorized the transfer of unobligated balances from "Defender Services" to other appropriation accounts of the Judiciary, provided that compensation of attorneys appointed to represent indigent defendants hereinafter be paid in the year in which payment is required. This transfer authority is conferred on the Director of the Administrative Office, under the supervision of the Judicial Conference of the United States, subject to notification of the Appropriation Committees of the Congress in compliance with Section 606 of Public Law 100-459. The transfer of the $39 million was made to the following accounts:

Salaries and Expenses	$ 35,550,000
Court Security	1,000,000
Administrative Office of the U.S. Courts	2,000,000
Federal Judicial Center	440,000
Total	$ 38,990,000

QUESTION:

You request no-year status in FY 1991 for $61,045,000 for space alteration projects. Why do you require this no-year authority?

ANSWER:

Normally the Judiciary and the Executive Branch agency with the authority to provide facilities for the Judiciary, the General Services Administration (GSA), share the cost of large projects. The GSA has authority for no year funds vested in its revolving fund, the Federal Buildings Fund. When a contract schedule is delayed, GSA still has the ability to obligate its share of the alteration costs. Contracts cannot be initiated unless both the Judiciary's share and GSA's "share" of the project have been committed.

The Judiciary's alteration funds are returned to the United States Treasury at the close of the fiscal year if a contract has not been awarded or the funds cannot be obligated for another project. The Judiciary's share of the costs that were budgeted and appropriated for a given project's contract cannot be made available, without deferring another planned project, if a contract slips to the next fiscal year.

In addition, GSA or the courts may cancel a project, or GSA may over-estimate the cost. The funds obligated are now returned to the Treasury. No year authority provides the flexibility to use those funds to offset the cost of a future project. In the long term, therefore, the Judiciary's budget request would be reduced.

In summary, the no year authority will synchronize the GSA contracting schedule and the Judiciary's budget execution schedule. This will provide an effective use of limited resources appropriated by the Congress in that no projects will be delayed, adding to their cost.

QUESTION:

How have you handled these type projects in past years?

ANSWER:

In the past the Judiciary has had to:

(1) hold large sums in reserve to handle cost overruns;

(2) defer projects scheduled for funding in a current year;
(3) continually review prior year obligations to determine whether funds lapsed from other projects can be applied to a project which has a cost overrun.

Defender Services

QUESTION:

Prior to FY 1989, funds for Defender Services were obligated based on estimated costs for these services. Beginning in FY 1989 you were authorized to obligate funds based on actual billings. As a result of this change you had unobligated balances of $22 million carryover from FY 1989 into FY 1990. What unobligated balances do you plan to carryover from FY 1990 to FY 1991?

ANSWER:

In FY 1989, as authorized by Public Law 101-145, the compensation of panel attorneys and related services were obligated in the year in which payment was required. Until there is sufficient actual data for the payment of these costs under this revised accounting procedure, the number and amount of payments in a given fiscal year is projected from a model developed through a review of historical caseload and payment activity. At the present time it appears that there will be some amount of unobligated balance in fiscal year 1990, but we are unable to estimate a precise amount. As more actual accounting data becomes available, we hope to be able to provide a reliable estimate of the status of funds in the last quarter of FY 1990.

QUESTION:

Since you now obligate these funds based on actual billings, why is it necessary to continue to appropriate these funds on a no-year basis instead of an annual basis?

ANSWER:

The "Defender Services" appropriation was established as a no-year account because the Judiciary had no control over the number of attorney appointments in any given year. Funds were obligated at the time of a panel attorney's appointment. Since there could be a significant variance in the number of appointments from one year to the next, the Congress agreed to establish the account as a no-year appropriation.

The change in the language now allows the payment of panel attorneys from funds appropriated in the year in which payment is required. This does not materially change the uncontrollable nature of the process. The courts have no control over when and if a panel attorney will seek payment for services rendered. Since approximately ten percent of all panel attorney services continue to be provided pro bono publico and the Judiciary is unable to determine the timing of requests for reimbursement, no change in the classification of this account is warranted.

QUESTION:

You project a dramatic increase in the number of habeas corpus petitions filed by state prisoners who have been sentenced to death. What impact will this have on death penalty resource centers?

ANSWER:

Resource centers are anticipating increased funding needs in order to enable them to recruit and assist private attorneys capable of providing representation in the growing number of habeas corpus petitions filed by state prisoners who have been sentenced to death.

QUESTION:

What rates for panel attorneys have been approved by the Judicial Conference in handling death penalty cases and are those rates reflected in your budget request?

ANSWER:

At its September 1989 proceedings, in order to provide guidance to presiding judicial officers, the Judicial Conference established a recommended range of $75 to $125 per hour for compensation for attorneys receiving Criminal Justice Act appointments in death penalty cases. Under the Anti-Drug Abuse Act of 1988, 102 Stat. 4181 (1988), the presiding judicial officer has the authority to fix compensation for Criminal Justice Act (CJA) appointed attorneys providing representation in federal capital prosecutions and habeas corpus death penalty cases, notwithstanding the compensation rates and maximums which would otherwise apply under the CJA. In light of the range established by the Judicial Conference, a rate of $90 per hour was used in estimating the requirements for death penalty representation included in our budget request.

Court Automation

QUESTION:

One agency under our jurisdiction is very proud of the fact that they have been able to increase their workload and reduce case backlogs without personnel increases -- all due to automation. Have the courts been able to reduce or offset staffing and other support costs through your automation efforts?

ANSWER:

Automation technology in the courts improves service to the public, increases productivity, and permits existing staff to handle a greater workload in a more efficient and effective manner. In court support offices, automation has restructured the way work is performed, thus improving the quality of and access to case management information by court personnel and the public. In support of these automation activities, some additional staff is being provided temporarily to the courts to assist them in assimilating the new technology. In addition, existing court personnel have been reassigned and retrained as necessary to operate in the new environment. Work measurement studies are presently underway to determine productivity gains resulting from automation and to adjust the staffing formulas.

Consolidated automation support services have enabled the Judiciary to reduce the need for staff in certain areas. The consolidated Central Violations Bureau service has reduced the staff required to perform this function by 30 positions in the courts. In addition, the BANS bankruptcy noticing service has similarly eliminated the need for 46 positions in the courts, and additional savings are expected as more courts can avail themselves of consolidated bankruptcy noticing services.

While the installation of automation in the courts, such as electronic docketing, improves productivity and service to the public by permitting existing staff to handle a greater workload, office automation creates a need for long term technical support that did not previously exist in the court. In order to deliver this support, some additional staff must be provided to the courts on a permanent basis. The Judiciary's FY 1991 budget submission includes a request for 240 positions to provide on-site technical expertise and user assistance to the courts for the rapidly growing number of personal computers installed in the courts. Experience in the Judiciary, other government agencies, and private industry indicates that it is essential to provide such on-site support for equipment and systems at a national and local level in order to make the most effective use of the equipment. In chambers, modern office automation equipment permits secretaries, law clerks, and judges to streamline document preparation and dissemination and provides access to legal research databases thus greatly improving their productivity; however, it will not reduce the size of the judges' staff.

QUESTION:

You are requesting authority to collect fees for access to information obtained through automation.

A. Please explain how this fee would be imposed and do you have an estimated cost.

ANSWER:

At its December 1989 meeting the Committee on Judicial Improvements approved an amendment to the Judicial Conference's bankruptcy miscellaneous fee schedule to establish the following initial rates for electronic access to bankruptcy court data on the PACER system.

Yearly Subscription Rate

Commercial - $60 per court
Non-profit - $30 per court

Per minute charge

Commercial - $1.00
Non-profit - $0.50

The Committee further approved amendments to the Conference's district court miscellaneous fee schedule to establish the same rates, and to request the enactment of legislation by the Congress permitting the Judiciary to retain these fees. The Judicial Conference approved both of these recommendations at their March 1990 session.

The annual subscription rate would be charged when an account is opened and a password issued. The initial subscription would include 60 minutes of free usage. The per minute charge would be assessed on a monthly basis. The PACER system provides a summary activity report which can be modified for billing purposes. This modification would require minimal additional programing by the Administrative Office. Until a centralized billing site can be established, each clerk's office providing this service will send monthly statements and monitor accounts. Delinquent accounts would be terminated by revoking passwords. This function would require minimal additional clerical support from the clerk's office until a centralized billing center is established.

B. Are you currently charging for this information when it is provided in a paper format?

ANSWER:

Currently copies of bankruptcy docket sheets are made available at the rate of .50 per page as prescribed by the Judicial Conference's fee schedule promulgated under 28 U.S.C. § 1930(b). That schedule also provides for a charge of $3.00 per micro-fiche sheets which contain case and party indexes.

C. Do you have any estimates on how much you will collect and will this fee help offset some of your automation costs?

ANSWER:

Estimates of the revenue that will be generated from these fees are not possible due to the lack of information on the number of attorneys and individuals who have the capability of electronic access. However, there has been a great deal of interest expressed from large law firms and bankruptcy reporting agencies and it is anticipated that the revenue generated will offset a portion of the Judiciary's cost of automation.

QUESTION:

Are the automated systems which the courts are procuring relying on a decentralized base utilizing minicomputers/personal computers, or on the more conventional use of large mainframe computers?

ANSWER:

The automated systems which the courts are procuring rely entirely on a decentralized base utilizing minicomputers and personal computers.

QUESTION:

To what extent does the Judiciary coordinate with other agencies in developing other systems?

ANSWER:

The Judiciary coordinates the development of its automated systems with Executive Branch agencies to the extent that a common interface is necessary and promotes efficient and effective utilization of resources without providing Executive Branch agencies with an unfair competitive advantage over the private sector in litigating cases before the court. Examples of this coordinative effort include the development of the Naturalization System in concert with the Immigration and Naturalization Service; the development of the interface between the Judiciary's Bankruptcy Court Automation Project (BANCAP) and the U.S. Trustee's Automated Case Management System (ACMS); and the ongoing Fine Center development effort between the Judiciary and the Department of Justice. The Federal Judicial Center (FJC) also coordinates its developmental projects with the Executive Branch. Examples of ongoing FJC developmental projects include pilot projects for public access and electronic filing being coordinated with the Department of Justice.

QUESTION:

In the future, do you plan to utilize the Judiciary Automation Fund to replace or enhance systems you are currently purchasing which become obsolete?

ANSWER:

The Judiciary has made a strong commitment to the ongoing pursuit of technological improvements. The success of the automation program depends, now and in the future, on the availability of a long term stable source of funding. The need for funds may diminish some once the initial delivery phase of the automation program is completed; however, a solid base of funding must exist to ensure the renewal of automation resources and to avoid stagnation and obsolescence. The Judiciary Automation Fund, which operates without fiscal year limitation, will provide the stability and flexibility in funding that is necessary to achieve the goals of the Long Range Plan. The authority for the Fund will expire on September 30, 1994. It would be of great benefit to the Judiciary if the authority for the Fund were extended indefinitely beyond its expiration date on September 30, 1994. Extension of the authority for the Fund would provide the Judiciary with an excellent vehicle for the continuing replenishment of technology that has met the end of its useful life cycle.

At the present time the recommendation to request that Congress extend the authority for the Fund has not been proposed to the

Judicial Conference. The recommendation is planned as an agenda item for the consideration of the Committee on Judicial Improvements at its June 1990 meeting.

QUESTION:

Would it be possible to make the Judiciary Automation Fund resemble a revolving fund and amortize the cost of your new systems over their projected life, with the goal of having sufficient funds in the Fund to purchase replacements?

ANSWER:

There are no plans to utilize the Judiciary Automation Fund to amortize the cost of new systems over their projected life. Amortization over the five year systems life of the equipment would result in the creation of a reserve fund with annual deposits equal to 20% of the cost of the new equipment over the five year period that the Fund is in existence. Amortization would reduce the amount of funds available for the purchase of new systems by approximately 20% each year. This would decelerate the implementation goals of the Long Range Plan for Automation in the U.S. Courts. Therefore, amortization would be counterproductive unless accompanied by an offsetting increase in annual deposits to the Fund and an extension in the life of the Fund past its expiration date of September 30, 1994, to cover the period of time when the systems are due for replacement.

QUESTION:

What are the estimated lives of your major systems?

ANSWER:

The life cycle of hardware systems in the courts is approximately 5 years therefore systems purchased in 1990 will not be scheduled for replacement until 1995. Under the Long Range Plan for Automation in the U.S. Courts court systems are continually being installed, upgraded, and replaced in five year cycles that began in 1983. The projected schedule for installation of initial, replacement, and/or upgraded hardware systems in the courts is approximately 30 systems per year in the district courts and 20 systems per year in the bankruptcy courts through fiscal year 1993. Budget requests have been formulated to assure that sufficient funds will be available over the next five years to acquire computer hardware to meet the replacement and/or enhancement needs of the courts on a timely basis.

Space Alteration Projects

QUESTION:

Why are you requesting an increase of almost $34 million in FY 1991 over a base of $27 million in FY 1990?

ANSWER:

The increase is needed in order to:

(1) accommodate the Judiciary's share of capital projects proposed by the General Services Administration for either design or construction in 1991;

(2) accommodate additional positions authorized by the Congress. The Judiciary does not budget additional funds for altering space for each specific new position. However, most courthouses have reached a point where they can no longer accommodate increases in personnel without causing the relocation of such units as probation and pretrial services to other leased space. The space so vacated must be altered for the incoming personnel.

(3) ensure that if a court is realigning its space, provisions are made for anticipated increases in the number of senior judges;

(4) accommodate projects that were deferred in fiscal year 1990, and provide for unanticipated renovation requirements in locations such as Tulsa, Oklahoma; Seattle, Washington; Hato Rey, Puerto Rico; Newark, New Jersey; St. Croix, Virgin Islands; and San Diego, California.

QUESTION:

How much did you spend for space alterations in fiscal year 1988 and 1989?

ANSWER:

Approximately $20.6 million in fiscal year 1988, and $15 million in 1989.

QUESTION:

What impact will deferral of 1990 projects have on the courts and can some of these 1991 projects be deferred?

ANSWER:

As described in the budget narrative, the Judiciary has already deferred $10 million in projects in fiscal year 1990. Because the facilities planning, design and construction process is so complex, deferred projects which already have been designed will simply add to the cost of the project in the long run. When a project is deferred, an entire contracting process has to completely start over and the project design may become out-of-date. Assuming a 10 percent overhead charge by the General Services Administration to design and contract for a project, it will cost the Government an additional $1 million if $10 million in 1990 projects which have been deferred are further deferred in 1991.

In addition, none of the 1991 alteration project budget request can be deferred. Although the specific projects described in the Judiciary's 1991 budget may change or be delayed, others may be added by the General Services Administration by the time the 1991 appropriations bill is enacted.

QUESTION:

For the record, please identify the total FY 1991 request of $61 million for alteration projects and prospectus projects, as displayed in the chart on page 5.67 of your justification.

ANSWER:

The $61 million requested for space alteration projects can be identified as follows:

- -- $21.8 million for 1991 prospectus level projects;
- -- $2.8 million for projects between $5,000 and $25,000;
- -- $1.7 million for projects below $5,000;
- -- $18.0 million for projects exceeding $25,000 but below prospectus level;
- -- $10.0 million for projects exceeding $25,000 which are being deferred in 1990 due to lack of sufficient funds;
- -- $6.0 million for anticipated increases in senior judges, magistrates, and recalled bankruptcy judges.
- -- $1.1 million for child care centers.

QUESTION:

Also, please identify which of the requested projects and their costs result from new space required due to the expansion of Court personnel and related workload in the last two drug bills.

ANSWER:

The Judiciary does not budget specifically for space alterations related to specific positions or programs. However, since the vast majority of the increase in resources provided to the Judiciary were approved on the basis of drug workload, almost all of the funding would be justified as expansion related to the drug bills.

QUESTION:

We understand that the Courts are proposing legislation which will take Court facilities out from under GSA, would you please describe the proposal and why you believe it to be necessary?

ANSWER:

The Judicial Conference, at the recommendation of its Committee on Space and Facilities in September 1989, endorsed the introduction of legislation that will provide the Judiciary with independent real property authorities. This legislation, H.R. 4178, will give the Judiciary the ability to set its own priorities with respect to capital projects subject to Congressional review and no longer to Office of Management and Budget review. H.R. 4178 will:

- provide the federal Judiciary with the same real property authorities now held by Congress and the Executive Branch;
- provide for the Judiciary to continue to use GSA to provide real property services where GSA can do so efficiently and effectively, but that GSA will charge only the actual costs of such services rather than the "comparable commercial rate";
- provide for a direct relationship between the Judiciary and the Congress in deciding the Judiciary's space and facilities program, but does not affect the traditional Public Works Committees' jurisdiction over courthouses;
- provide an industrial, "no-year" fund (the Judicial Space and Facilities Management Fund) into which appropriations are paid to fund the Judiciary's program;
- provide the Judiciary the option of using time financing for new construction projects with approval of the Congress.

Criminal Fines Collections

QUESTION:

You request $900,000 for criminal fine collection. Please describe for the Committee how this new national fine center will operate and how it will coordinate its operations with the courts and other federal agencies especially the Department of Justice.

ANSWER:

The Administrative Office is planning to establish an automated national center that will provide current information on the payment of all fines, assessments and restitution imposed by the courts in all cases except petty offense cases, which are presently processed by the Central Violations Bureaus. The center will establish an account receivable for each defendant who is sentenced to pay a monetary penalty.

The fine center will send monthly statements to all defendants, receive their payments, deposit fines and assessments and disburse restitution, warn defendants of delinquencies and defaults, and prepare reports for probation offices, United States attorneys, and other interested parties. The center will also receive electronic information directly from the Bureau of Prisons regarding defendants making payments while in prison. It will refer default cases to the Department of Justice for enforcement and keep a record of post-default payments.

In addition to providing regular reports as needed, the fine center will provide dial-in access to probation, clerks' and United States attorneys' offices. The fine center will relieve those offices of the responsibility of receiving any fine, assessment or restitution payments and of the responsibility of maintaining local records of payments or balances. It will also produce statistics and reports for the Sentencing Commission, the Administrative Office, and the Department of Justice.

QUESTION:

Please describe all the funding sources for the center?

ANSWER:

The Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, amended the Victims of Crime Act of 1984 (42 U.S.C. § 10601(c)) to provide that the first $2.2 million excess of $125 million deposited in the Crime Victims Fund each fiscal year from 1989 through 1992 shall be available to the judicial branch for the administrative costs of carrying out its functions under 18 U.S.C. § 3611-3612. It further provides that in fiscal years 1993 and 1994, the judiciary would receive the first $2,2 million in excess of $150 million deposited in the Fund.

The first $2.2 million (from the excess in fiscal year 1989) was made available just recently to the judiciary to begin development and implementation of a pilot program. An annual budget of $2.2 million, however, is less than is needed by the judiciary to expand the program to a fully-automated national fine center. Moreover, there is the possibility that the Crime Victims Fund will not reach the statutory ceiling, and thus no funds would be provided to process fines in a given year.

In addition to our F.Y. 1991 request for an additional $0.9 million, we are exploring the possibility of obtaining additional revenues from fines, to bring funding up to 5 percent of collections, or at least $5 million.

QUESTION:

Do you plan to begin operating the center in F.Y. 1990 with funds from the Crime Victims Fund?

ANSWER:

Now that funds have been made available, we are planning to establish a pilot program in the latter part of F.Y. 1990. The pilot would be established initially in one district court. Two additional courts would be added subsequently to the pilot, feeding their data to the host court. The host court would function as a mini-fine center, accepting payments and maintaining account balances for itself and the "feeder" courts.

In addition to testing the procedures and software for posting and tracking fines, assessments, and restitution, the pilot would be used to develop a system for the electronic transfer of information between the fine center and the courts, the United States attorneys' offices and the Bureau of Prisons. The fine system would be designed to work in conjunction with a new automated probation and pretrial services program (PACTS) and eventually with the district courts' ICMS electronic docketing system for criminal cases.

QUESTION:

Do you have any estimate on the increase in fines that the new center will collect?

ANSWER:

There are no estimates on increases in payments or collections that would result from the establishment of an automated national fine center. The proposed system, however, will replace the fragmented system that now exists for tracking fine, assessment and restitution payments, and will enable retrieval of up-to-date information on the status of any such obligation.

The effectiveness of the fine system will be enhanced through integration with the automated probation system . Although the fine center will record all payments and track delinquencies, the probation office will have direct personal contact with defendants under supervision and consequently will be in the best position to encourage a defendant to make payments as ordered by the court.

Electronic communications between systems will also enable the probation system to update the fine center automatically by sending debtor information such as address changes, modifications or remission of the fine or assessment, and changes in probation jurisdiction or supervision.

The fine center will maintain the official record of all fine payments. When a fine is in default, the fine center will notify the appropriate United States attorney's office and provide the information needed for that office to begin collection procedures it deems appropriate. The fine center will also record any post-default payments to assure that there is a complete payment history in each case.

Probation/Pretrial Services

QUESTION:

You request $1,400,000 for a new home confinement program. Please describe this program to include the division of responsibilities and funding between the probation service and the Federal Prisons?

ANSWER:

As stated in the Judiciary's fiscal year 1991 appropriation request, $1,400,000 is needed to pay for additional staff to perform home confinement duties. Of this total, $800,000 covers the salaries and benefits of 87 staff members (54 Probation Officers, 33 Clerks) to run the program for three months. The remaining $600,000 of the request will be used to defray the operating expenses of the program incurred by the Probation Offices. The Federal Bureau of Prisons is currently funding a two district pilot study of parolees released from custody and placed in home confinement in lieu of placement in a half-way house. With Bureau of Prisons funding, that program is currently expanding to 12 additional districts and will accept participants from several different entry categories. Administration of the program rests with the Judiciary, while funds for the pilot districts will come from the Bureau of Prisons. They will pay for placement of at least 50 persons in each of the 14 districts until such time as funds are available in the Judiciary to pay for home confinement services in all judicial districts.

QUESTION:

You are also requesting $3,650,000 for electronic monitoring. Is this also a cost associated with home confinement and did you consider this in your cost per detainee in the previous question?

ANSWER:

Yes, this is a cost associated with home confinement, it is the amount necessary to support the contract costs of electronic equipment. We estimate that home confinement costs 17 to 20$ per day. This includes the $3,650,000.

QUESTION:

You are requesting an increase of $9,250,000 for the Drug Dependent Offenders program to bring it to a total of almost $29 million. The Committee would like to know how successful the current program is before we approve additional funds. How do you measure success in this drug aftercare program?

ANSWER:

In 1984 a study conducted by the Federal Judicial Center (FJC) of 1,000 drug aftercare clients revealed: The overall percentage of persons with positive tests tended to decline after the first 3 months of the program. The study also revealed: The greater the number of client counseling sessions and probation office visits per month, the less likelihood an arrest will occur while the individual is in the program.

A 1986 two-year study of the Substance Abuse Treatment Program revealed that 50 percent of those terminated from treatment had completed 12 months without positive urine tests, had not been convicted of a criminal offense, had assumed social and economic responsibility and were not associating with persons using or trafficking drugs. The 1986 study also revealed that only 8.4 percent of the participants were terminated for new criminal activity.

As a result of increased prosecution of drug related offenses and a concerted effort to train probation officers in drug identification, the number of drug dependent offenders in treatment rose from 4,784 on June 30, 1980, to 17,846 as of September 30, 1989; an increase of 373 percent. In addition to the above mentioned findings, the FJC study found that 70 percent of the participants had a documented drug history; over half had previous drug treatment experiences; and 22 percent had a current conviction for violent crimes. The study also concluded that while 63 percent had at least one positive urine test result during the study, the overall percentage of positive urines tended to decline after the first three months of the program.

In the 1986 study, 39 percent were terminated for continued drug use or failure to attend treatment sessions or other technical reasons. This fact highlights the role of the probation officer in the treatment process. Officers maintain close supervision of offenders in the aftercare program and move to remove from the community those offenders who choose not to remain drug free.

QUESTION:

How does your success rate compare to drug aftercare programs of private and other Federal agencies?

ANSWER:

There are no rigorous comparative studies. There is no comparable Federal program.

At the state and private level, attempts to study comparable programs have been unsuccessful. In the 1986 study by the FJC, for example, researchers attempted to identify other programs for criminal justice clients that could be compared on the crucial variable of continuity of treatment. Continuity, or length of time the client spends in treatment, is thought by many experts to be a sound measure of how likely it is that the program will have an impact on the person receiving it. Researchers at the FJC could not locate any state or private programs with anywhere near the same length of continuity of treatment. Ours was the only program where offenders were required to continue in the program for significant lengths of time.

QUESTIONS SUBMITTED BY CONGRESSMAN EARLY

FY 1991 APPROPRIATIONS

Space and Facilities Committee

QUESTION:

The Space and Facilities Committee is recommending transferring authority of capital projects away from GSA to the Judiciary. Why is this necessary?

ANSWER:

The Judicial Conference, at the recommendation of its Committee on Space and Facilities, in September 1989 endorsed the introduction of legislation that will provide the Judiciary with independent real property authorities. This legislation, H.R. 4178, the Judicial Space and Facilities Management Improvement Act, is necessary because:

The Director of the Administrative Office of the United States Courts has the statutory responsibility to provide accommodations for the courts, yet he lacks the statutory authority to provide such accommodations.

The Judiciary, as a separate, independent branch of government is dependent upon an Executive Branch agency (the General Services Administration (GSA)) for the provision of its facilities. The area of real property is the only administrative area upon which the Judiciary must depend on the Executive Branch.

Because the Office of Management and Budget (OMB) sets a limitation on the amount of new obligational authority for the General Services Administration's Public Buildings Fund each year, the Judiciary, therefore, must compete with Executive Branch facilities priorities, in spite of its being an independent branch of Government.

As an independent branch of the government, the Judiciary should have the ability to set its own priorities with respect to capital projects without the Office of Management and Budget and the General Services Administration acting as intermediaries on the Judiciary's behalf.

The funding for Judiciary capital projects should be appropriated separately from the General Services Administration's appropriations process, and, so that, as with all other Judiciary appropriations, the requests would be subject to Congressional review, but no longer under the Office of Management and Budget control.

QUESTION:

If this recommendation was enacted, what impact would it have on the Boston Courthouse?

ANSWER:

The effect on the Boston Courthouse could only be a positive one. The Office of Management and Budget delayed the feasibility study of constructing a new courthouse in Boston, and by the time the study was finally released by the Office of Management and Budget, an entire budget cycle had passed by. As a result of the delay in issuing the feasibility study, the Boston Courthouse has not been included in the Administration's fiscal year 1991 capital improvements program. Had H.R. 4178, the Judiciary Space and Facilities Management Improvement Act, been enacted, it would have been within the Judiciary's authority to request of the Public Works Committees of the Congress authority to construct a new courthouse in Boston. Should the legislation be enacted by the time the Boston Courthouse is authorized by the Congress, the Judiciary will have the option of contracting through GSA to perform the design and construction of the facility, or to contract independently for design and construction.

QUESTION:

What is the status of the proposed Federal Courthouse in Boston at this time?

ANSWER:

The General Services Administration has presented a report to the Congress which recommends a new courthouse for Boston on a site to be determined. The Judiciary preference is to demolish the low-rise portion of the John F. Kennedy Federal building to allow for construction on that site. The current courthouse could be repaired for general purpose office space to house agencies dislocated form the J. F. Kennedy low-rise facility. GSA prefers to construct a new courthouse facility on a site to be acquired, dispose of the McCormack Building, and to provide leased space elsewhere for those agencies that will have to be relocated. Although the Judiciary hopes that site selection and design should get underway immediately, the Judiciary has not been privy to the Executive Branch's timeframes for designing and completing this project.

Long Distance Telecommunications

QUESTION:

Has there been a compatibility study between the FTS2000 and the automation system being implemented by the Judiciary? What type of cooperation has there been between the FTS2000 people and the people working on the automation software?

ANSWER:

FTS2000 interfaces with the Judiciary's integrated automation and communications system, known as JURIST, through the data communications network. The network component of the JURIST system is in the procurement phase and is scheduled to be awarded this fiscal year. Upon contract award, the network will interconnect the decentralized computer resources throughout the Federal Judiciary. The network will provide local and wide area connectivity, file transfer capability between judiciary organizations, access to existing and future data processing applications on a variety of systems, and a common electronic mail service. The wide area network services required in the JURIST environment will be provided by FTS2000.

To date, there has been no requirement for direct contact between General Services Administration's FTS2000 staff and the Judiciary's software developers. However, in support of the JURIST network procurement, Judiciary staff met extensively with FTS2000 staff to ensure that FTS2000 would be able to provide all of the required services. Once a positive determination was made, vendors interested in competing for the JURIST network contract were directed to U.S. Sprint for information regarding FTS2000 services. Sprint provided information concerning FTS2000 to offerors for use in proposal preparation without Administrative Office intervention.

Probation Automated Case Tracking System

QUESTION:

The Probation Automated Case Tracking System (PACTS) is presently being pilot tested in the Southern District of Florida, the Northern District of Ohio, and the Western District of Texas. What is the status of this pilot program? How much longer is this pilot program scheduled to run? What has been learned from this pilot program? Would you consider this pilot program a success? Were there any problems discovered during the pilot program? If so, what change needs to be made to correct these problems?

ANSWER:

The Probation Automated Case Tracking System (PACTS) is on schedule and fully funded for fiscal year 1991. While there is no specific cut-off date for the pilot test, we expect it to be substantially completed by the Summer of 1990. The PACTS pilot test has demonstrated that the system is exceedingly useful in replacing outdated manual systems as a means to locate case files and generate reports, thus enhancing overall case management in the probation offices. In all respects, the pilot program has been an overwhelming success in eliminating redundancy in the probation offices and helping to streamline work. Further, steps are being taken to enhance the program by adding the Federal probation sentencing and supervision reporting requirements and to interface the PACTS system to the Criminal electronic docketing system and to the fines processing center.

Computer Security

QUESTION:

One of the highest priorities in the development of a system like this (JURIST) should be computer security. What steps are being taken to prevent any type of illegal manipulation of this system? How much of the FY '91 request will be for computer security? After the system is implemented, what percentage of the annual appropriations does the Judiciary anticipate spending on the computer security?

ANSWER:

In combination with the physical security measures within the court environment, i.e., building guards and security systems, many computer security features will be included in the JURIST system. The JURIST network will be designed to take special precautions to protect all files circulated electronically. Specifically, outside access by electronic means to the computer equipment in judges' chambers will be denied by the network. Additionally, files circulated between or among Judiciary sites will be encrypted as they are introduced into the network. The security precautions of JURIST will include access control and accountability; system certification, accreditation, and assurance; contingency planning; data integrity; physical controls; and a program of security awareness. In FY '91 two additional positions have been requested to assist in the computer security program. The cost of computer security in FY '91 and the percentage of the annual appropriations that will be spent on computer security is largely dependent upon technical information in the data communications network contract to be awarded late this year. Therefore, we will develop computer security costs after the contract award and will be prepared to provide these costs later.

Public Access

QUESTION:

There will definitely be some interest by the public in the information this system will be storing. What type of individuals would use the public access aspect of this system?

ANSWER:

There are three distinct categories of potential users of electronic access to court data. The first consists of members of the general public who may have a personal interest in a particular case. This type of occasional user is looking for a specific, limited type of information in one case and would most likely utilize a service like the Voice Case Information System (VCIS) which provides only the key data to specific cases through the use of a touch tone telephone. We have recommended that there be no charge for this service at this time because the cost of providing the service is minimal and use of the service results in a substantial savings to the court by freeing deputy clerks who would normally answer telephone calls to work in other areas.

The second category of users includes individuals or firms having a need for routine and frequent access to a court's database. This group would benefit significantly from the ability to obtain case information on a regular basis without having to visit a clerk's office. They would be most likely to use the direct dial access system (PACER). This group consists mostly of law firms and other organizations, but may include some non-profit interests (a special reduced non-profit rate has been recommended to accommodate these interests).

The third group consists of heavy commercial users, such as credit agencies, who are interested in obtaining large amounts of court information on a daily or weekly basis, to repackage and sell to other users.

QUESTION:

Does the judiciary anticipate any problems in allowing public access to this system?

ANSWER:

There are minimal problems that could arise from the provision of this type of service. The potential for damage or sabotage to the courts data base is eliminated through the use of a 386 PC. Data is downloaded daily to the 386 PC from the court's large computer and direct dial access is limited to the PC.

The sale of bulk data in various forms will be a significant part of requests for automated data and could be problematic. This type of information is of great interest to large scale users such as credit agencies who repackage and sell information. The sale of bulk data poses serious legal and policy issues including the application of the Fair Credit Reporting Act to the courts, and has caused problems for Executive Branch agencies. As a result, the provision of bulk data requires further study and negotiation with commercial interests to determine the manner in which this information will be transferred (tapes, disks, etc.) as well as appropriate policy considerations and costs. In the interim, the addition of case closing reports, case opening reports and the possible addition of creditor lists to services available on PACER-BANCAP will provide commercial users with the types of information they have requested.

QUESTION:

What would the Judiciary consider to be reasonable fees to charge the public to use this system?

How will these fees be structured?

ANSWER:

At its March 1990 session, the Judicial Conference approved a recommendation from its Committee on Judicial Improvements to establish the following initial rate structure for electronic access to bankruptcy case data on the PACER-BANCAP system.

Yearly Subscription Rate:

Commercial - $60.00 per court
Non-Profit - $30.00 per court

Per Minute Charge:

Commercial - $1.00
Non-Profit - $0.50

The Conference also approved a recommendation to amend the district court miscellaneous fee schedule to establish the same rates for electronic access to court data in the district courts, and to request the enactment of legislation by the Congress permitting the Judiciary to retain these fees.

Training Centers

QUESTION:

The Judiciary has established two training and support centers, one in San Antonio, Texas, and the other in Phoenix, Arizona. How many people are trained in each of the centers annually? Is there enough staff and space in these centers to accommodate the needs of the people needing training on the new system? Though both centers include CIVIL/CRIMINAL training, only the San Antonio center has training and support for BANCAP (Bankruptcy Court Automation Project). Are there any plans in the future to expand this program to the Phoenix center? If not, why? If so, what will be the added cost to expand this program to Phoenix?

ANSWER:

The current rate of system implementation is twenty bankruptcy courts and thirty district courts each year. At this rate, a total of 280 end users, 40 managers, and 40 clerks and chief judges are trained on BANCAP at the San Antonio, Texas training center annually, and a total of 420 end users, 60 managers, and 60 clerks and chief judges will be trained on CIVIL in the San Antonio, Texas, and Phoenix, Arizona training centers annually. The training centers presently have enough space and staff to accommodate the training and support needs of the courts in accordance with the implementation plan for this fiscal year. Additional positions have been requested in FY 1991 to provide staff resources to allow the training centers to accommodate the growing workload of user support as automation is implemented in more courts, to maintain the training schedule required for the current rate of system implementation, and to provide additional training service.

There are no plans to expand BANCAP training to the Phoenix, Arizona training center. Such an expansion would require a considerable investment of time and effort to build a BANCAP training staff. Moreover, the current training capacity for BANCAP is adequate to meet the objectives of the Long Range Plan for Automation in the U.S. Courts as established by the Committee on Judicial Improvements. It has been determined that the minimal acceleration in the training schedule that would be achieved through the expansion of BANCAP training and support would not be cost effective.

TUESDAY, FEBRUARY 27, 1990.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WITNESSES

L. RALPH MECHAM, DIRECTOR

RAYMOND A. KARAM, ASSISTANT DIRECTOR FOR ADMINISTRATION

E.L. STOORZA, ASSISTANT DIRECTOR FOR ADMINISTRATION AND TECHNOLOGY

Mr. SMITH. The next item the Committee shall consider is the FY 1991 budget for the Administrative Office of the United States Courts. The FY 1991 request is $38,487,000.

We shall insert at this point in the record the justification materials submitted in support of the fiscal year 1991 budget.

[The justifications follow:]

THE JUDICIARY

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Summary of Requirements

Appropriation 1990 (enacted)	$33,670,000
1991 budget estimate	38,487,000
Proposed Increase	4,817,000

Appropriation Language

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SALARIES AND EXPENSES

For necessary expenses of the Administrative Office of the United States Courts as authorized by law, including travel as authorized by 31 U.S.C. 1345, hire of a passenger motor vehicle as authorized by 31 U.S.C. 1343(b), advertising and rent in the District of Columbia and elsewhere, [$33,670,000] of which an amount not to exceed [$5,000] is authorized for official reception and representation expenses.

$ 38,487,000

$ 10,000

; Provided further, That notwithstanding the provisions of 28 U.S.C. 602 (a) and subchapter III of chapter 53 of title 5, the Director may adjust the compensation of employees of the Administrative Office at GS grades 16, 17, or 18 as he may deem necessary, provided that the compensation paid to any such employee shall not exceed the annual rate of basic pay of Executive Level V.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
FISCAL YEAR 1991
(Dollar amounts in thousands)

Page No.	Summary of changes:	1991 Request Perm. Pos.	1991 Request Amount
	Appropriation 1990 (enacted)	614	$33,670
	Adjustments to base and built-in changes:		
	1. 1990 pay cost increases and other adjustments in compensation:		
9.6	a. Fiscal year 1990 increases for pay costs	...	+ 755
9.6	b. Annualization of fiscal year 1990 health benefits costs.	...	+ 39
9.7	c. Cost of within-grade and other salary advancements	...	+ 335
9.7	d. One more compensable day in fiscal year 1991	...	+ 86
9.7	e. Annualization of positions authorized in fiscal year 1990.	...	+ 1,344
	2. 1991 pay cost increases and other adjustments:		
9.7	a. Increase for fiscal year 1991 pay raise.	...	+ 619
9.7	b. Increase in pay costs for executive level positions in fiscal year 1991.	...	+ 263
9.7	3. Increase in space rental rates	...	+ 170
9.8	4. Increases in travel, contract rates, and charges for services, supplies and equipment.	...	+ 206
	Subtotal	...	+ [illegible]
	Resources for workload increases and improvements in services:		
9.8	4. Other workload and program increases	...	+ 1,000
	Total increases requested.	...	+ 4,817
	Total appropriation requested, 1991.	614	$38,487

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Obligations by Activity

(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1990)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Executive Direction......	45	$ 3,943	45	$ 4,390	45	$ 4,507	...	$+ 117
Planning, Evaluation and Statistics............	76	4,656	76	5,184	76	5,322	...	+ 138
Program Management	149	8,152	149	9,076	149	9,318	...	+ 242
Administration	303	15,074	303	16,783	303	17,231	...	+ 448
Automation & Technology..	41	1,845	41	2,054	41	2,109	...	+ 55
Total direct obligations.......	614	33,670	614	37,487	614	38,487	...	+ 1,000
Reimbursable program.....	164	8,055	164	8,129	215	11,035	51	+ 2,906
Total obligations...	778	41,725	778	45,616	829	49,522	51	+ 3,906
Offsetting collections from: Federal Funds...	-164	- 8,055	-164	- 8,129	-215	-11,035	-51	- 2,906
Budget Authority....	614	$33,670	614	$37,487	614	$38,487	...	$+ 1,000

Object Classification

(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation.	$19,420	$22,299	$+2,879
12	Personnel benefits.	2,995	3,556	+ 561
21	Travel and transportation of persons.	970	1,245	+ 275
22	Transportation of things.	86	90	+ 4
23	Rental payments to GSA.	3,710	3,880	+ 170
	Communications, utilities, and miscellaneous charges.	1,369	1,415	+ 46
24	Printing and reproduction	33	34	+ 1
25	Other services.	3,102	3,864	+ 762
26	Supplies and materials.	459	543	+ 84
31	Equipment	1,525	1,560	+ 35
42	Insurance claims and indemnities.	1	1	...
	Subtotal, direct obligations	$33,670	$38,487	$+4,817
	Reimbursable obligations.	8,055	11,035	+2,980
	Total obligations	$41,725	$49,522	$+7,797

Mr. **Smith**. We have with us today the Director of the Administrative Office of the United States Courts, Mr. Ralph Mecham, who has a statement in support of this budget request. Mr. Mecham, you may proceed with your statement.

Mr. **Mecham**. Yes sir, Mr. Chairman and members of the committee, I will be mercifully brief.

You treated us very well last year. Because of your intensive care, we moved from the critical list to the serious list. We are making progress, and we thank you very much.

We have come in for an increase, not of personnel directly. It is a lesser increase proportionally than the Judiciary requested, although there is almost a direct ratio, not necessarily a one-for-one ratio. As the Judiciary increases, the work for the Administrative Office increases as well.

I would just quickly let you know that, as a percentage of the budget, the Administrative Office share continues to decline. We have moved downward since 1981 from 2.6 percent of the Judiciary budget to 1.9 percent in FY 1991. This request will be down to 1.9 percent, a major drop in our share. In terms of the workload, each Administrative Office employee in 1981 supported 29 people in the Judiciary. In FY 1991, we will support 43, an increase of 48 percent. We like to think we are becoming more efficient. That does not diminish our need for resources for necessary support and, particularly, professional help that we need.

Mr. Chairman, I will stop at this point and yield for any questions you may have.

[The prepared statement of Mr. Mecham follows:]

STATEMENT

Of

L. RALPH MECHAM

DIRECTOR, ADMINISTRATIVE OFFICE
OF THE UNITED STATES COURTS

Before The

SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE,
THE JUDICIARY, AND RELATED AGENCIES

Of The

COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

On

JUDICIARY APPROPRIATIONS ESTIMATES FOR FISCAL YEAR 1990

FEBRUARY 27, 1990

Thank you for the opportunity to appear before the subcommittee and present the 1991 budget request of the Administrative Office of the U.S. Courts. Accompanying me at this hearing is Mr. Raymond A. Karam, Assistant Director for Administration and other members of my senior staff.

Before I get into the substance of the 1991 request, I would like to thank all the members of the subcommittee for your help and support on our 1990 appropriation. As you know, last year the Administrative Office was stretched to the breaking point to provide essential services to the Judiciary. The willingness of the subcommittee to recognize this and to work with us to provide sufficient funds in 1990 was critical not only to the Administrative Office, but to the whole Judiciary. Your efforts are greatly appreciated. In particular, thank you for the 87 additional positions and funding that were included in the Administrative Office appropriation.

While the additional positions have helped ease the immediate crisis so that we can accomplish our core functions, we still have many challenges to face in meeting present and future needs. Because workload continues to grow, the Judiciary needs increased funding in 1991 to serve the public well. Judge Arnold is testifying as to the needs of the courts in 1991. As you know, the Administrative Office is called upon to provide more services as the Judiciary grows. In the personnel office alone, we now handle 35,000 pieces of mail coming in each month. This is an enormous workload for a small staff to process.

When the Administrative Office was created in 1939, the bulk of its work consisted of delivering basic administrative services to the federal courts in the areas of procurement, facilities management, payroll, accounting, budget, statistics collection, and personnel.

Relation of Obligations to Outlays
(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$33,670	$38,487	$+4,817
Obligated balance, start of year	4,697	5,068	+ 371
Obligated balance, end of year	-5,068	-6,556	-1,488
Outlays	$33,299	$36,999	$+3,700

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Direct:			
Total number of full-time permanent positions	614	614	...
Total compensable workyears:			
Full-time equivalent employment	523	575	+ 52
Full-time equivalent of overtime and holiday hours	3	3	...
Reimbursements:			
Total number of full-time permanent positions	164	215	+ 51
Total compensable work years:			
Full-time equivalent employment	144	209	+ 65

General Statement

This appropriation is for the salaries and operating expenses of the Administrative Office of the United States Courts, pursuant to 28 U.S.C. 601 - 611. The Administrative Office provides management support and policy guidance to the Judiciary (exclusive of the Supreme Court) including such activities as outlined below:

-- fiscal control, including financial reporting, accounting, budgetary, auditing, and disbursing functions;

-- centralized implementation and coordination of management information systems for the Judiciary which provide more cost effective and efficient uses of Judicial Branch resources, thereby increasing accountability, security, timeliness, and accuracy of information;

-- personnel administration, including the processing of personnel documents and the Judiciary's payroll, the review and audit of positions, the formulation of the Judiciary's personnel policies, and the interpretation of Federal personnel policies as they apply to the Judiciary; and the maintenance of records and the processing of applications and awards relating to Civil Service and FERS retirement and the Judicial Survivors' Annuities System;

-- statistical analysis, reporting, and formulation of caseload projections through the collection and compilation of data relating to the workload of the United States courts of appeals, district courts, bankruptcy courts, the U.S. Probation Service, and Federal Defender organizations as well as information on grand and petit juries;

-- procurement and property management functions such as the acquisition of space, supplies, equipment, materials, and lawbooks as well as the maintenance of Federal property management records; work measurement studies which are used to develop workload standards for the staffing requirements of the courts and office systems studies which are used to identify, evaluate, and subsequently implement automated and/or manual systems which may be beneficial to court offices on a nationwide basis;

-- recommendations on management practices throughout the United States courts in the form of financial audits and in-depth reviews and analyses of the nature and extent of compliance with Judiciary policies, plans, and procedures;

-- development of missions and goals for the Administrative Offices, including a management-by-objectives program;

-- program administration and policy interpretation for various elements of the Judiciary including magistrates, bankruptcy, probation, clerks, Federal Defender organizations and court-appointed counsel, and court reporting and interpreting services;

-- staff support on legislative, legal, and equal employment opportunity matters.

References to basic statutory authorities are contained in the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

It is important to note that as a result of a reorganization in fiscal year 1990 a new activity Planning, Evaluation and Statistics, is included in the structure of the Administrative Office. This activity has, in the past, been a part of both the Program

Management and Administration functions. With increasing emphasis on statistical information regarding caseload and other workload projections as well as program planning and review priorities to improve operational effectiveness, the consolidation of these efforts and responsibilities into one organization is a logical and necessary action to take in the Administrative Office.

Proposed Language Changes

It is proposed that the appropriation language be amended to provide for authorization of an increase in the amount available for official reception and representation expenses, from $5,000 to $10,000. This authority permits the Director of the Administrative Office to use the otherwise allocate appropriated funds to chief judges of circuit and district courts for expenses of items in the official or quasi-official interests of the Judiciary. An example of this type of expense would be a reception of a foreign visitor studying the American court system. The sum of $5,000 has been authorized since fiscal year 1985. This authorization request will provide adequate funding for these purposes.

Further, it is proposed that the appropriation language be amended to give the Director authority to grant salary increases to personnel in the pay grades GS-16, 17 and 18 up to the limit of an Executive Level V salary in order to keep pace with increases proposed and approved for members of the Senior Executive Service in Executive Branch departments and agencies. When the Civil Service Reform Act of 1978 was passed the senior staff in grades GS-16 through 18 in the Administrative Office of the U. S. Courts were not afforded the opportunity to become members in the Senior Executive Service. This request will enable the Director to increase salaries of his top level staff commensurate with increases that will go into effect for employees at the same levels of responsibility and authority in the other branches of government.

Justification of Changes

The amount requested for fiscal year 1991 is $38,487,000. Excluding mandatory items and adjustments to the base, the increase in budget authority in 1991 over 1990 is $1,000,000. This increase will fund travel, printing, contract services, training and supplies that will enable the Administrative Office to carry out its duties and responsibilities in light of increasing workload and program demands to provide services to the U.S. courts.

Item 1. 1990 Pay cost increases and other adjustments in compensation.

This item contains the fiscal year 1990 pay cost increases and other adjustments in personnel compensation and related benefits, such as within-grade pay raises and health benefits.

(a) Fiscal year 1990 increase for pay costs ($755,000)

All General Schedule and Wage Grade employees received a 3.6 percent pay increase, effective the first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $755,000. The amount for nine months ($565,000) was absorbed in 1990, however the annualized amount of $755,000 is needed in 1991.

(b) Annualization of fiscal year 1990 health benefit costs ($39,000)

The amount requested includes $39,000 for the annualization of increases in the agencies share of payments for employees health benefits coverage effective in January 1990.

(c) Cost of within-grade and other salary advancements ($335,000)

All graded personnel who receive a satisfactory performance rating, pursuant to the salary plan for Judiciary personnel, are entitled to periodic step increases in compensation corresponding with those provided by Chapter 53 of Title 5, United States Code. Also periodically the Judicial Conference approves salary modifications to the existing JSP standards. It is estimated that those salary advancements and salary modifications will cost $335,000 during the fiscal year 1991 ($291,000 for personnel compensation and $44,000 for related benefits). The estimate is based on past experience and takes into account savings due to turnover to personnel and the filling of vacancies at lower rates of pay.

(d) One more compensable day in fiscal year 1991 ($86,000)

The sum of $86,000 has been included in recognition of the fact that in fiscal year 1991 there will be 261 compensable work days compared with 260 compensable work days in fiscal year 1990 ($75,000 in personnel compensation and $11,000 in related benefits).

(e) Annualization of positions authorized in fiscal year 1990 ($1,344,000)

In fiscal year 1990 Congress approved partial funding of 87 positions. The sum of $1,344,000 is requested to provide funding for these positions in 1991.

Item 2. 1991 Pay cost increases ($882,000)

This item contains anticipated increases due to pay raises in employees salaries and benefits for fiscal year 1991.

(a) Increase for fiscal year 1991 pay raise ($619,000)

All General Schedule and Wage Grade employees except those in grades GS-16, 17 and 18, are expected to receive a 3.5 percent pay raise effective the first pay period beginning on or after January 1, 1991. It is estimated the increased cost of this raise for nine months in fiscal year 1991 is $619,000 ($546,000 for personnel compensation and $73,000 for related benefits).

(b) Increase in pay costs for executive level positions in fiscal year 1991 ($263,000)

As a result of Public Law 101-194 members of the Senior Executive Service are expected to receive a 25 percent increase in their salary rates effective the first pay period beginning on or after January 1, 1991. In order to keep Administrative Office executive staff salaries in line with pay rates assigned to top level staff in other branches of government the Director is requesting authority to grant employees in grades GS-16, 17 and 18 a 25 percent increase equivalent to the raise members of the Senior Executive Service are expected to receive.

Item 3. Increase in space rental rates ($170,000)

The sum of $170,000 is requested for fiscal year 1991 to cover increases in space rent assessed by the General Services Administration. The rental cost for space occupied by the Administrative Office of the U. S. Courts will increase from $3,710,000 to $3,880,000, an increase of 4.6 percent.

Item 4. Increases in travel, contract rates, and charges for services, supplies, and equipment ($206,000)

The sum of $206,000 is requested to cover anticipated increases in current expenditures resulting from inflation estimated at 4.3 percent, with the exception of lawbooks which are expected to increase by an inflation factor of 8 percent. The increases by category are: travel, $32,000; transportation of things, $4,000; rental of equipment, $6,000; other rent, communications and utilities, $40,000; printing and reproduction, $1,000; other services, $84,000; supplies and materials, $22,000; lawbooks, $10,000; and equipment, $7,000.

Item 5. Other workload and program increases ($1,000,000)

The sum of $1,000,000 is requested for improving services provided to courts throughout the U.S. for the following purposes and initiatives.

An additional $243,000 is requested for increased travel requirements to: provide additional audit coverage caused by the changing of the audit schedule from a four year to a two year cycle; train field office personnel how to use automated financial systems, conduct design reviews and progress checks on GSA contract architectural engineers during the design phases of alteration projects; conduct court visits and management reviews; evaluate the electronic sound recording program being used by 204 judges throughout the U.S.; institute improvements in case management and jury utilization; and perform compliance reviews.

The sum of $582,000 is requested to provide the resources necessary to initiate projects which cannot be performed by the Administrative Office staff due to lack of technical expertise or for projects which are more readily available and more easily provided by the private sector. This request includes contract services for: new programming requirements for the existing automated system; a cost analysis study of current printing and distribution functions; additional costs for rentals of computer time, computer equipment and peripherals due to increased operational requirements of the central accounting system and other automated systems; an assessment of employee training requirements to include setting up specific training programs; an actuarial data model for the Judicial Survivors' Annuity Fund; a contract to prepere a manual for clerks' of the courts and provide revisions to the court reporters' manual; and a study to monitor and assess the experimental use of videotape equipment in the courts.

The sum of $95,000 is requested for training activities to fund: procurement workshops for staff of the courts to improve their knowledge and application of procurement regulations and guidelines; instruction for staff on how to use new ADP equipment and programming capabilities; and a contract officer warrant training program.

A total of $80,000 is requested for ADP supplies, software and to replace ADP equipment.

Today, in addition to those services, we provide complex legal, program, and automation support. The additional services now provided include: staff support and legal counsel to the Judicial Conference; coordination among the Judiciary, Congress, and the Executive Branch; management support and administrative services for the Federal Judicial Center and the U.S. Sentencing Commission; advice and assistance on equal employment opportunity; delivery and management of automation services; management assistance and program direction for the bankruptcy courts, clerks' offices, court reporting and interpreting services, libraries, defender services, magistrates, probation, and pretrial services; and planning and evaluating Judiciary operations.

Increases in the courts' workload and staff have resulted in increased demands on the Administrative Office. Total federal caseload for the 10-year period of 1979-1989 increased by 121 percent, including a 48 percent increase in district court filings, a 97 percent increase in filings in the courts of appeals, and a 184 percent increase in bankruptcy filings. This requires not only more administrative support for additional court personnel, but creates work for our program divisions. As examples, we have provided legal assistance required to implement sentencing guidelines, and we have been substantially involved in the congressionally mandated drug testing pilot project and in home confinement pilot projects. Our probation division now supports over 4500 positions in the courts, and with a growing number of defendants entitled to services under the Criminal Justice Act, our defender services division now oversees 43 Federal Defender offices and 15 death penalty resource centers. Other activities for the Administrative Office have developed in the areas of support for the court automation effort, new Judicial Conference requirements, including extensive staff assistance to the committees, and new legislation.

However, as I brought to your attention last year, the size of the Administrative Office staff declined steadily relative to the growth of the Judiciary during the 1980's. For example, the Administrative Office staff represented about 3.4 percent of the total Judiciary staff in 1981. This is projected to drop to 2.3 percent of the total in 1991, a 32 percent decrease. The ratio of court employees serviced by Administrative Office employees is projected to be 43:1 in 1991, up from 29:1 in 1981, an increase of 48 percent (See Exhibit A). Since 1988, the number of nonreimbursable positions in the Administrative Office has not increased at all, while the Judiciary has experienced some increase in positions each year during that same period (See Exhibit B).

The rate of increase in budget authority for the Judiciary has also outpaced the Administrative Office. In 1981, the Administrative Office accounted for 2.6 percent of the Judiciary's funding. By 1991, this is projected to be 1.9 percent, a decrease of 27 percent. Between 1988 and 1990, the Judiciary's budget authority experienced a steady rate of increase, compared to a smaller, more sporadic growth rate for the Administrative Office (See Exhibit C).

In spite of this, I am more hopeful this year than last for two reasons. First, you showed your willingness to help us by providing additional resources needed to do the job. Second, although we are faced with increasing demands on our capabilities, I have several initiatives planned and underway to develop new management strategies designed to focus on our priorities and increase our productivity. Where last year our state of health was in "critical" condition, this year, our health has improved to "serious" condition. I am sensitive to the problems the subcommittee faces in trying to reach deficit targets, and I am determined to direct our existing staff resources to critical, high priority needs. As a result, I am not requesting any additional direct positions for the Administrative Office in 1991. However, because of urgent need, the Judicial Conference has authorized me to request 51 new reimburseable positions to support court automation and criminal fine collection activities. These would be paid for out of the courts' salaries and expenses account.

BUDGET REQUEST

Let me briefly describe our 1991 requirements. Our request totals $38,487,000, an increase of $4,817,000 over 1990. The increase is needed to pay for current staff and to enable us to operate critical programs.

The Administrative Office attributes about $2.9 million of its total 1991 needs to activities related to the war on drugs. In 1991, drug-related cases are expected to make up 35 percent of all criminal cases filed within the U.S. Courts, a 66 percent increase over 1989. This will result in an increase of $78.7 million in drug-related resources expended by the Judiciary, as drug-related costs rise from $324 million in 1990 to $403 million in 1991.

The additional drug-related caseload in the courts increases the drug-related workload in the Administrative Office. As an example, our probation division now supports over 1,626 staff years of drug-related probation and pretrial work in the courts, and the increase in substance abusers demands the provision of additional testing and treatment services. The division currently manages a congressionally-mandated drug testing demonstration project in 8 districts and a drug abuse treatment program for an estimated 19,700 people on probation and 31,200 new defendants designated by the court or probation officers to receive such services.

Other drug-related workload increases are a result of increased support for additional court personnel, such as processing travel vouchers and personnel actions and managing space requirements. We have also been devoting more effort to tracking and reporting drug-related activities, both for our own planning purposes and in response to legislative and executive branch inquiries.

Our $4.8 million increase for 1991, of which all but $1 million is uncontrollable expense, is composed of the following elements: (1) $1.3 million to support annualized pay costs for the positions approved in 1990; (2) $2.4 million for pay raises and benefits for the remaining positions, and higher costs of rent, travel, contracts, training, supplies, and equipment; and (3) $1 million for improving services provided to courts throughout the U.S. This $1 million represents a channeling of funds into areas that could yield a high payoff in terms of better management and increased effectiveness.

It includes $243,000 for increased travel to (1) change the audit cycle of the courts from a four year to a two year cycle; (2) train field office personnel how to use automated financial systems; (3) conduct design reviews and progress checks on GSA contract architectural engineers during the design phase of alteration projects; (4) conduct court visits and management reviews; (5) evaluate the electronic sound recording system being used by 204 judges; (6) institute improvements in case management and jury utilization; and (7) review how well courts are complying with Judicial Conference policies and procedures.

$582,000 of the increase would allow us to contract out for (1) new programming requirements for our existing automated system; (2) a cost analysis study of

printing and distribution functions; (3) computer operational time and equipment; (4) an assessment of employee training requirements; (5) an actuarial model for the Judicial Survivors Annuity Fund; (6) work on a court clerks' manual; and (7) a study on video equipment in courts.

$95,000 of the increase is for training staff in the courts in procurement and ADP. $80,000 is needed for ADP supplies, software, and equipment replacement.

I am also requesting authority to pay my senior staff salaries up to the new 1991 Executive Level V salary level. In order to "do more with less", the Administrative Office must be able to attract and retain managers capable of handling complex and extensive areas of responsibility that have a major, direct effect on the courts.

There are 17 so-called "supergrades" in the Administrative Office, each of whose salary is capped at the current Level V pay. However, Executive Level pay will rise 25 percent in January 1991. I expect Senior Executive Service (SES) pay in the Executive Branch to rise commensurately. Because the Administrative Office is not covered by the SES program, we need independent authority to adjust the salaries of our supergrades to salaries equivalent to those of their Executive Branch counterparts and in line with their executive staff responsibilities. This authority will cost $263,000 for nine months in FY 1991.

Altogether, with program increases, our total request for FY 1991 is 14.3 percent higher than FY 1990.

MANAGEMENT INITIATIVES

In my continuing effort to improve management within the Administrative Office, I have asked my staff to focus on long range goals as well as short term objectives. My primary goals continue to be: (1) operating at peak efficiency at the least possible cost; (2) improving service performance and delivery; (3) modernizing both Administrative Office and court management systems and planning capabilities (including the installation of modern automated systems); (4) improving communication with judicial officers and staff; (5) decentralizing operating functions when appropriate; and (6) eliminating internal and external impediments to effective Administrative Office and court management. I have been very pleased with how well these goals have been incorporated into management plans during this past year.

Also, the Administrative Office has expanded our capacity to prepare judicial impact statements on a regular basis to assess the resource impact of important legislative and executive branch proposals on the Judiciary. These impacts can then be incorporated into our planning process.

I have tried to use the additional positions provided in 1990 to concentrate on management initiatives that will maximize the efficient use of existing resources. To assist me in allocating the new 1990 positions, I conducted a random sample survey of top court management, including chief circuit, district, and bankruptcy judges, chief probation officers, clerks, and public defenders. Using their expressed needs and priorities as a guide, I directed my top management to focus on certain initiatives.

For example, greater discretion has been given to the courts to handle certain administrative and operational functions in those areas where a core administrative capability already exists in the courts. These include broader budget execution authority; on-site voucher examination for payments to panel attorneys representing indigent defendants in more than 40 courts; authority to procure items up to $25,000 without approval by the Administrative Office; and management of two buildings occupied in whole by the courts. By positioning more discretion in the hands of local managers, the administrative system can become more responsive, and I hope, more efficient.

Such delegations of authority require the development of systems and controls to assure that responsibilities are carried out properly. Oversight and audit of programs becomes more important, as do the provision of training and guidance.

At the same time that we are moving forward to automate the courts' information management, the Administrative Office has undertaken several automation projects designed to eliminate costly duplication of tasks and provide better management information to both the Administrative Office and to the courts. For example, under our old accounting system, the Administrative Office had access only to disbursement data from the courts, which was transmitted in hard copy and, except for some automated courts, was keypunched into a computer by our personnel in Washington. Under our new Central Accounting System (CAS), the courts enter disbursement and obligation data directly into our central system, which generates reports needed for financial management. Currently, 36 of the 90 district courts are on-line with this system, and most of the remaining courts will be brought into the system during 1990-1992.

Also, we are undertaking a pilot project to give selected courts access to our automated personnel system, which will eventually allow the courts to enter personnel data directly, eliminating the need to keypunch in Washington.

Other automation projects underway consist of a system to track the dollars and dates involved in all our space and facilities projects (such as new construction and building renovations), and automation of the process of ordering law books for the courts. By eliminating duplication and taking the pressure off the Administrative Office to provide those functions that can be handled better at the local level, the Administrative Office will be able to devote more resources to providing professional support.

In the office automation arena, we provided approximately 300 personal computers to professional and secretarial staff in 1989, thus successfully standardizing throughout the Administrative Office the use of compatible word processing and electronic spreadsheet software. This standardized software can vastly increase productivity throughout the Administrative Office by permitting sharing of documents between offices. It will also allow the Administrative Office to be integrated into the Judiciary's planned nationwide electronic mail network known as JURIST (the Judiciary Users Requirements for Integrated Systems Technology).

Court automation has created a new responsibility and function within the program divisions of the Administrative Office. The divisions are now helping to define the courts' needs and system requirements and working with the system programmers in the development of applications. This makes the program divisions a liaison between the court managers, who are the end users, and the Administrative Office automation people, who do the actual design and programming of the needed systems.

In addition to these automation-related activities, we will be identifying better ways of providing services, developing guidelines for the courts, and providing the – support needed to help in program implementation. The Administrative Office's important responsibilities for providing staff support to the Judicial Conference committees continue to grow. We estimate that this will require at least 60 staff years in 1990. Another important activity is ensuring that the courts are responsive to congressional concerns, especially with regard to quality of services and accountability for appropriated funds.

To enhance our planning capability further, I have incorporated our statistics division into the Office of Planning, Evaluation, and Statistics. The increasing emphasis on statistical information to develop our workload projections and assist in program planning and review convinced me that consolidation of these two efforts will improve our operational effectiveness and was a necessary and logical step.

All the initiatives I have described will allow us to do more with what we have. We will continue to help the courts expedite bankruptcy case administration, improve juror utilization, expand the use of magistrates to assist judges, improve supervision of offenders on probation, and to look for ways to help judges effectively use systems personnel to assist with their growing workload.

However, our need for additional top level managers continues to grow as the Administrative Office moves to delegate operational responsibilities to the courts, and we concentrate on policy guidance, program management, and support to the Judiciary, The Federal Court Study Committee in a recent meeting unanimously approved support for additional funding for the Administrative Office as well as more top level management positions. I want to bring this to your attention because it is absolutely critical for the Administrative Office to have sufficient top management to oversee our growing and increasingly complex responsibilities. Additional supergrade positions, along with the small budgetary increase they represent, would also enable me to carry out the management initiatives I have described.

COURT AUTOMATION

Before I close, let me share with you the latest events surrounding our court automation efforts. There are now 164 reimbursable positions in the Administrative Office dedicated to developing, installing, and supporting court ADP systems. These consist of the 90 positions that were transferred to the Salaries and Expenses account and the 74 additional positions approved for court automation support in 1990. Many of the new positions are being filled with hard-to-find, qualified applicants that we identified during an OPM sponsored job fair last November. To manage the growing automation activities better, I have reorganized our Systems Services Division into four separate divisions under an Assistant Director.

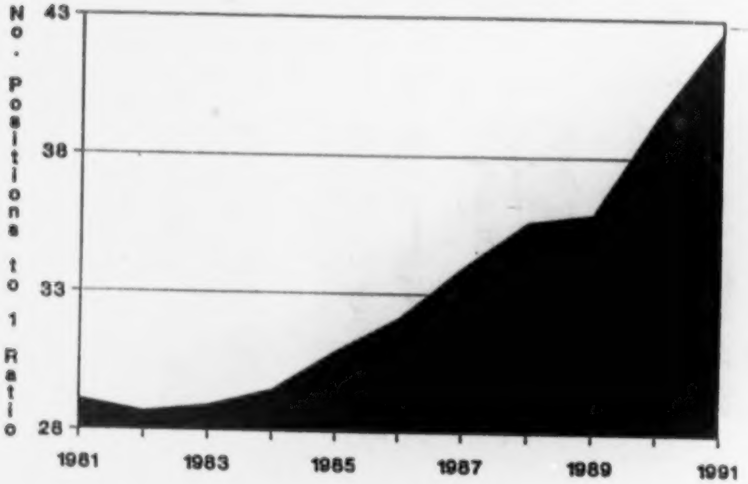
Central to the reorganization is our commitment to the integration of the Judiciary's data processing, office automation, and telecommunications initiatives into the comprehensive JURIST system. JURIST will provide the Judiciary with a full range of integrated automation tools such as word processing, electronic mail, access to the courts' case management databases, and access to legal research data bases through a single PC workstation located at each court employee's desk.

As I mentioned earlier, we have requested an additional 51 reimbursable positions in 1991, in order to support the accelerated expansion of our ongoing automation initiatives. This request is detailed in the

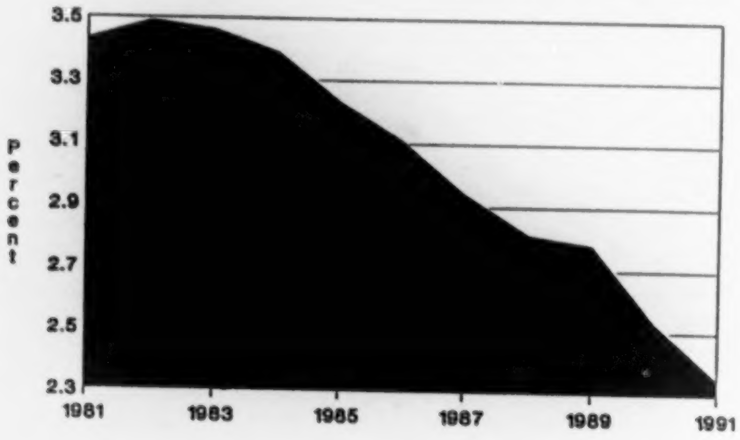
Salaries and Expenses budget request. As the JURIST implemetation proceeds, especially with the additional resources you provided in 1990, I believe our reimbursable staff requirements will stabilize.

Thank you for giving me the opportunity to describe our resource needs as well as my plans for improving the ability of the Administrative Office to meet the needs of the Judiciary. Let me emphasize, however, that we need adequate funding in order to put these improvements in place. We face many challenges in the years ahead as the Judiciary grows and adapts to modern technology. I feel confident that we can meet that challenge in a manner that makes the most efficient use of the resources you make available to us.

Exhibit A



Judiciary/AO Position Ratio

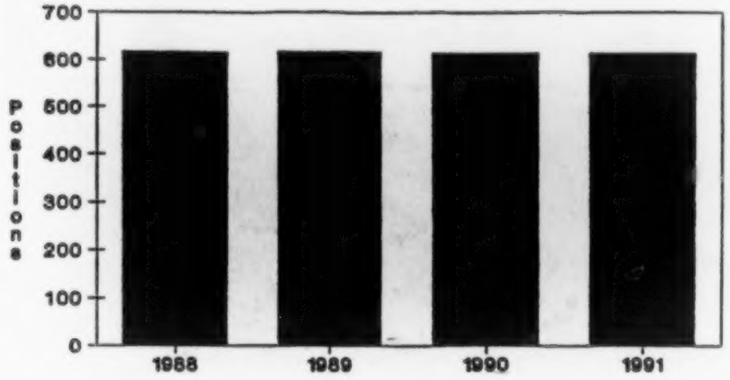


AO Positions

As a Percent of Judiciary Positions

Exhibit B

Full-Time Permanent Positions
The Administrative Office of the United States Courts



Comparative Rate of Increase
Positions
Administrative Office and Judiciary

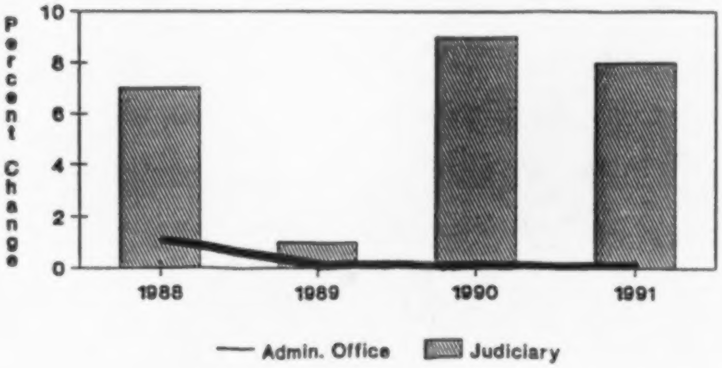


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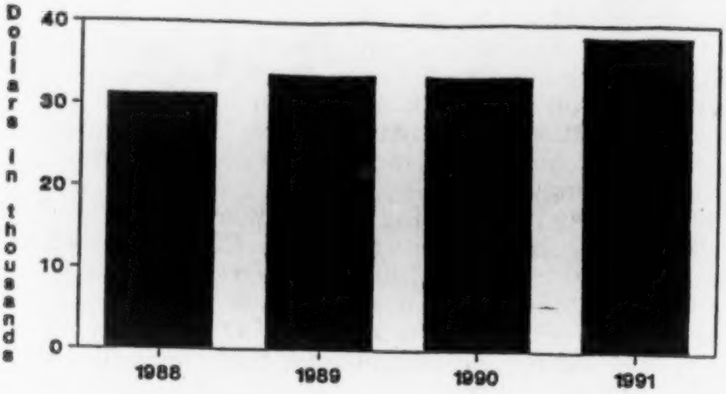
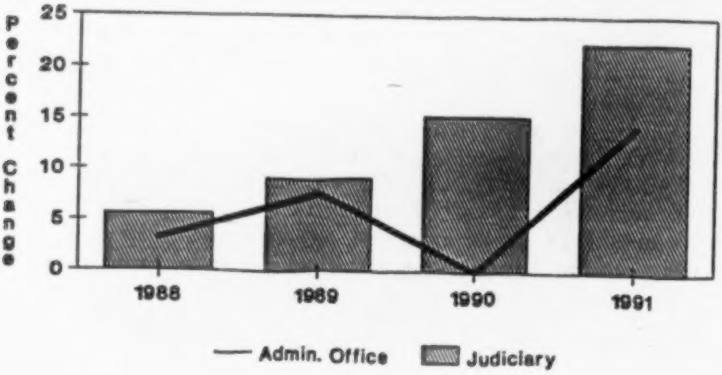
Exhibit C

Budget Authority
The Administrative Office of the United States Courts



Comparative Rate of Increase
Budget Authority
Administrative Office and Judiciary



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EXECUTIVE LEVEL PAY PLAN

Mr. **Smith**. I will submit some questions to you to be answered for the record regarding the funding and the workload increases.

But first let me ask you a couple of questions about your bill language requests.

You are requesting language that will allow the Director of the Administrative Office to increase pay for super grade employees up to the annual rate of Executive Level V. Why is that necessary?

Mr. **Mecham**. The supergrades were left out of the pay raise. The people who got the pay increase are the Executive Level people from the level of IV or V on up. The White House has indicated that the Senior Executive Service, which is equivalent to the supergrades in our agency, will all receive an increase of 18 to 25 percent, as a result of the pay increase. Unless this is changed, our people will receive no comparable increase. We feel that parity and equity requires this change.

Mr. **Smith**. Have they been getting annual increases?

Mr. **Mecham**. They have been receiving COLAs just as the Senior Executive Service has, and just as several of the Executive Level people have.

The Senior Executive Service received a COLA this year. Our people did, but they did not get the increase that the Senior Executive Service will receive in 1991.

Mr. **Smith**. I guess I don't quite have it clear yet. These supergrade employees, have they in past years been getting COLAs?

Mr. **Mecham**. They received COLAs, as did the Senior Executive Service in the Executive Branch.

Mr. **Smith**. Well, the main thrust of the pay increase was to deal with those that have not been given COLAs.

Mr. **Mecham**. Yes. Many of them have not. But the Senior Executive Service did, and our people did, but the COLA was on a lower base salary because of the cap, they have had compression. They haven't been able to get full increases in many cases.

Mr. **Smith**. It's because of the compression you're talking about.

Mr. **Mecham**. That is part of it.

Mr. **Smith**. How did you accomplish these pay raises in previous years?

Mr. **Mecham**. As far as I know, this particular situation was without precedent. Our people basically have had increases the same way everybody else has, usually through COLAs. This time, the Senior Executive Service not only gets a COLA, but they will get a pay increase of 18 to 25 percent as a result of P.L. 101-194 which does not provide for a comparable increase for our supergrades.

RECEPTION AND REPRESENTATION EXPENSES

Mr. **Smith**. Why are you requesting authority to increase your representation expenses?

Mr. **Mecham**. Principally because we run out of money regularly.

What is happening is that the Judicial Conference of the United States has expanded its activity substantially. The representational and reception expenses of an official and a quasi-official nature continue to go up.

Mr. **Smith**. In reference to your request for a language change to provide an increase from $5,000 to $10,000 for official reception and representation expenses, please provide detailed information on the use of the funds in the past.

Mr. **Mecham**. I would be happy to.

[The information follows:]

Representation Allowances

During fiscal year 1988, expenditures totaled $3,902. This amount included $3,374 for official receptions for one judge retiring as chief judge of a court of appeals and two judges retiring as chairman of committees of the Judicial Conference; $411 for receptions with visiting judicial officials from other countries; $42 for two luncheons involving judges; and $75 for postage related to an official reception for former Congressman Rodino. Fiscal year 1989 expenditures totaled $5,000. Nearly the entire amount funded a portion of the cost of the Fiftieth Anniversary official reception for the employees of the Administrative Office, who were addressed by the Chief Justice.

WORKLOAD PROJECTIONS

Mr. **Smith**. Both you and we are heavily reliant on the workload projections.

Mr. **Mecham**. Yes.

Mr. **Smith**. When you attempt to justify your request, and when you predict that the bankruptcy caseload will increase by 118,000 cases next year, and that over 35 percent of the District Court filings will be drug related next year—how do you come up with those figures?

Mr. **Mecham**. Well, first of all, we have a professional staff that does little else but look at the caseload figures. And the projections by the way, have been remarkably good. We have often understated rather than overstated over the years, and it seems like an ever increasing trend as a result of the change in the bankruptcy laws and the state of the economy in certain States.

By and large, our projections have withstood the test of time. I am prepared to rely on them. Not that we might not miss them slightly. They have been remarkably accurate.

As far as workload goes, in addition to caseload, we do have under contract and under study now a complete re-examination of our workload data for district clerks, bankruptcy clerks, probation, and other aspects of the system, to make sure that our workload projections are accurate for people in the Judiciary, below the Judicial Officer level.

GSA POLICY

Mr. **Smith**. Now, I understand there is a new GSA policy out on your improvements of buildings, benches, jury boxes, and so forth, is there not?

Mr. **Mecham**. Yes. I regret to say GSA changed the rules on us in the middle of the game and said to us "if you don't put up an added amount of money for these purposes, we are not going to fund the project at all".

Mr. **Smith**. Shed a little light on it for us, if you will. What was the previous policy and what is the new policy, and how does it work?

Mr. MECHAM. Well, in the past, the GSA has endeavored to make these operations sort of a turnkey activity.

In fairness, under a 1983 policy which they have, they conceivably could have had a different approach in past years. But, in FY 1990, they changed the rules on us and said that some activities were above their so-called standard and that these "extras" are now going to have to be paid for by the Judiciary, even though we didn't have a chance to budget for it, or come before you and ask for money for it.

In some instances, we are talking about multi-millions of dollars. And it really gives us a terrific problem in our planning activities, and throws what we regard as an unfair burden on us.

I have Ray Karam here who is Assistant Director and an expert on the subject. I don't know if Ray wishes, or you would like him to add anything to that, but we really do have a very serious problem. I hope we are going to be able to work it out.

One thing we would like to do is to get legislation through Congress to change the master-servant relationship. We would like finally to be the masters of our own fate with respect to our needs as Congress is of its own.

Right now, our planning requests are determined solely by GSA and OMB. And they don't consult us for the most part. They serve us with edicts.

Mr. SMITH. Well, I recollect a problem from two or three years or longer ago. I think it was in Atlanta, Georgia, in the construction of the Courts building down there. Midway through the project, some judge ordered almost a complete gutting of the construction project, and to start afresh and to put this here and put that there at a cost of tens of millions of dollars. I don't recollect the amount.

Is not GSA doing the right thing in protecting the taxpayers from that kind of whim?

Mr. MECHAM. I don't recall that particular instance. I would have to do a little research on that one to determine.

Mr. SMITH. Well, I am——

Mr. MECHAM. Basically the Judiciary ought to police itself. If we had guidelines and standards and a voice so that we could plan, and standard guidelines for buildings and so on, we could police ourselves. But right now, the responsibility is diffuse, it's split. GSA sometimes will permit changes without even notifying us. We would like to be able to police our own selves and not have someone else have to do it.

Mr. SMITH. Well, I think you will get sympathy on that from here. However, what about the situation that I just told you about? Perhaps the gentleman would know.

Mr. KARAM. I am not familiar with that particular situation.

Mr. MECHAM. This is Ray Karam.

Mr. KARAM. But it does happen and it has happened in the past, that a judge will bring in the local GSA person and say I want this. And GSA employees have trouble saying "no" to judges like most other people in our society. And GSA goes ahead and does it.

GSA, it seems to me, gets the best of both worlds. They don't have to say "no" to the judge and then they can lay the blame off on the judge or the Judiciary when something goes awry.

As the Director just said, we are in the process now of establishing some fairly rigid guidelines or specifications for what a courthouse should look like and what it should have in it and so forth.

We are about a little less than a year away from having something available for the Judicial Conference to review and hopefully approve.

Mr. ROGERS. In essence, what would it do?

Mr. KARAM. In essence, what it would do, would be to say that this is what a courthouse should look like. If someone wants to deviate from these standards, hopefully there will be a sanction for that particular court or circuit to want to spend some of the money that's available to us on deviations.

We haven't had that kind of a system up to now. We hope to put something like that into place.

Mr. ROGERS. Who would determine then? Suppose there is a new courthouse to be built in Louisville, Kentucky. How would the process work under the way you would envision it?

Mr. KARAM. We would envision that the need has been established, or assume that. And then we would hire people that are knowledgeable in designing courthouses just to make sure we get a good courthouse.

GSA, through their rules and the rules that they have to work with in acquiring contractors, does actually hire the best contractors in the country. There's no question about it. Unfortunately, one of these very good contractors often gets his first initiation in building courthouses when he builds his first courthouse for us.

There are people in the country who specialize in courthouses, and these are the folks that we want to bring in. So, in this particular instance, what we would do in the future is assure that that courthouse design and what is needed there is thoroughly reviewed and laid out by somebody that is knowledgeable about courthouses.

If you do that to start with, I suggest that you won't get into the situation where a judge comes in after somebody starts something, and says "rip it all out." That's a terrible way to try and build a courthouse.

Mr. ROGERS. Well, okay. Go ahead with your example then. Your group would basically design the courthouse to be built? And then what?

Mr. KARAM. Under the current situation, under the plan that the Conference envisions, that's what I'm getting at——

Mr. ROGERS. All right.

Mr. KARAM [continuing]. Your remedy to the problem.

Mr. ROGERS. Right.

Mr. KARAM. When the program of requirements, or the requirements of the Courthouse are established, they would be established according to the specifications that have been approved by the Conference. The courtroom should be so large, the chamber should be so large, you should have a sound lock for jury rooms so that they——

Mr. ROGERS. I understand that. I'm trying to save time here. You give that to the GSA?

Mr. KARAM. Yes. That would go to GSA.

Mr. ROGERS. And GSA says we don't like it. What do you do then?

Mr. **Karam**. Well, we have a problem. [Laughter.]

Mr. **Mecham**. Right now, we are not in the process, to speak of, most of the time. We would like to reverse that and be involved in the process.

Mr. **Rogers**. Okay. So the thing you are going to propose would do what to remedy the problem?

Mr. **Mecham**. Well, the first thing, we would manage the money that now goes to GSA for our rent. We feel that we can amply meet our needs with the funds provided for rent.

That would then put us in the position of going to GSA if we wanted. If they can do the best job for us, then have them contract for us to do the job, or with other contractors. We could use their services.

Right now GSA goes ahead on its own. They will submit a building to Congress that we haven't even seen or heard about. Often this is the case.

We would like to have some voice in our own destiny in the Judiciary rather than have OMB and GSA tell us this is what you need, this is how we are going to do it, and then have them change the rules on us in the middle of the game and say you are going to have to pay *x* million dollars more than we said you would originally, based on our estimates.

We just want to change that relationship so that we can determine our priorities. We can do the planning. We can utilize GSA to assist us. But as long as we are in the situation where OMB and GSA decide what's good for the Judiciary, it is never going to work.

Mr. **Karam**. I'm sorry. I didn't mean to sound facetious when I said we had problems. What I had in mind was the situation in Puerto Rico where the courthouse stood empty for two years because GSA went ahead and built it the way they thought it should be built. The Judiciary refused to use it. The judges down there just wouldn't use it.

That was an extreme situation. There have been other situations where GSA has just gone off and said this is the way it's going to be. That's it.

The renovation of the Denver Courthouse right now is in that kind of a situation. We have been working for a little over a year with GSA, trying to get GSA off of their position that this is the way that courthouse should look; where the judges that are responsible for the courthouse and will have to live in it are saying no, we think that it should be done another way. We do have these problems.

Mr. **Rogers**. Well, do you anticipate that this would require legislation?

Mr. **Mecham**. We have a bill which will be introduced. Mr. Bosco, of the Public Works Committee, has hearings scheduled—I believe it's the 16th?

Mr. **Karam**. The 14th.

Mr. **Mecham**. The 14th of March on the legislation.

Mr. **Smith**. Mr. Early?

Mr. **Early**. Thank you, Mr. Chairman.

AUTOMATION

Mr. Mecham, on the automation effort, are they coordinating that with the bankruptcy courts and the trustees' office? Are you satisfied that they are cooperating on that?

Mr. **Mecham**. I think we have a reasonably good relationship with the trustees. In fact, everybody talks about that.

Larry Stoorza is an expert on the subject. If Larry is still here, he might respond to that.

Mr. **Stoorza**. Yes, sir. It's going very well at this point in time. We are exchanging data with them so that their existing system—they have a system called ACMS—and our system is providing data to ACMS—and we are prepared to provide them data everywhere we have the bankruptcy system—BANCAP—and everywhere they have their system.

They are also in the process of redesigning their ACMS system. They are adopting our standards in terms of operating environment, and they are building into that system the capability to exchange data, not only from us to them for case opening, but to provide case closing type data back to the Judiciary.

So I would say that the cooperation is very good.

Mr. **Early**. Are the trustees and your people using the same equipment?

Mr. **Stoorza**. Currently they are using a System 36. Their old system is not compatible with ours. And what we are having to do is use a PC as an interim means of exchanging data between the two systems.

However, their new system will be on a UNIX computer. The hardware doesn't have to be the same, but we will be in the same operating environment which will make the exchange of data very easy.

Mr. **Early**. Some of that ACMS that was planned in the 1989 stage is out of date already. Where are we in the process of changing that equipment?

Mr. **Stoorza**. Are you talking about the Justice Department?

Mr. **Early**. Yes.

Mr. **Stoorza**. The U.S. Trustees. I think they recognize that the System 36s they have, are outdated pieces of equipment. They have a project underway to replace that system throughout the U.S. Trustees offices.

STAFFING

Mr. **Early**. Your staffing for administration is decreasing?

Mr. **Mecham**. As a proportion to the Judiciary, it's decreasing. The AO staffing itself is staying flat. However, to meet the emergency needs of the Judiciary, the Judicial Conference has in effect loaned positions to us to implement the expansion that you had funded for us in the Judiciary. There are some reimbursable positions that we have to use for automation. So while the AO staffing is staying flat, the buildup to meet this critical need in automation is occurring under the Judiciary umbrella, under Salaries and Expenses.

TRAINING CENTERS

Mr. **Early**. Now, Mr. Mecham, we have three schools that we are sending your people to?

Mr. **Mecham**. That's for certain aspects of the program. We have the training center in San Antonio and one in Phoenix.

Mr. **Early**. Arizona, yes.

Mr. **Mecham**. And we've never had one in Philadelphia.

Mr. **Early**. Now, is all that going through you, the Administrative Office?

Mr. **Mecham**. Yes, it does.

Mr. **Early**. That's really where it should be.

Mr. **Mecham**. Some of it we farmed out, but we are responsible for it.

Mr. **Early**. Do you have enough money in here to allow you to send these people for training?

Mr. **Mecham**. We do. We will be in better shape if we don't have to divert the reserve of $7.8 million that Judge Arnold talks about. If we actually have that money available, we will be in better shape to do that work than we would be if we had to keep it in reserve and use it for other purposes.

For example, if we absorb the sequester, that will mean we will be short about 16.5 million. Then we would have to use that 7.8 million in reserve to cover it.

So we would be short in the automation area if we have to do that.

ADP MODERNIZATION

Mr. **Early**. Right. Now, on your modernization efforts at the Administrative Office, you speak of improving communication with Judicial offices, are we talking about the small computer?

Mr. **Mecham**. For the most part, we are, yes. UNIX is an area—do you want to comment, Larry? We are basically talking small computers, about the linkage and so on in most places, are we not?

Mr. **Stoorza**. Yes, sir. Our program really has two aspects. One is the office automation which is based on the IBM PC-AT compatible standard.

We are putting a good number of those in the judges' chambers and support offices. The other aspect of our program, the court automation program, is based on very small UNIX mini-computers or, in some cases, very specially configured powerful personal computers. The communications network that will be awarded this summer will tie these two things together so that we will have communications throughout the Judiciary and access to our systems.

Mr. **Early**. Will you provide for the record, as best you can, without going to expense to do this, how much of the system is IBM, how much is other, and also give us your general suggestions whether we should be, so to speak, requiring this?

[The information follows:]

Automation Systems

Although all equipment in the Administrative Office (both data processing and office automation) is IBM-compatible, very little equipment is actually provided by

IBM at this time. This is because the Administrative Office procures its equipment via the Federal procurement process and at this time IBM does not have any current contracts with the Judiciary. Nevertheless, the Administrative Office encourages all companies to make proposals against its requirements and would be pleased to install IBM equipment should IBM prevail as a result of the competitive process. With respect to our present plans, the Administrative Office is supported by two National Advanced Systems (NAS) computers with attendant peripheral equipment such as tape drives, disk drives, communications frontend, printers, etc., that are IBM-compatible. These machines are five and six years old, respectively, and no longer have the capacity to support the new central accounting system and other existing and planned expansion of AO systems. Therefore, the Administrative Office is planning to acquire a new mainframe to replace the NAS systems. This new mainframe will operate in conjunction with the presently owned peripheral equipment. IBM-compatibility will be specified as a mandatory requirement of the new system. With respect to office automation, the AO is utilizing the national office automation contract as a source for IBM-AT-compatible personal computers to meet the agency's office automation needs.

Mr. **Stoorza**. We have a variety of hardware that's out in the courts, and that is one of the advantages of this UNIX operating system. It allows us to be hardware independent.

We can get hardware from different vendors but we're on the same operating system.

Our primary mini-computer in the courts is a UNISYS computer that was awarded from a contract about three years ago. We also make use of 386 computers, and we have a procurement now underway to get those machines.

For office automation, we have a national contract that has Epson PC-AT compatible computers. However, the courts are not required to buy off that contract if they can find equipment off the GSA schedule that's compatible for the networks.

But we also have IBM type equipment in the AO, our main frames, that are used to run the payroll system and personnel systems.

Mr. **Early**. Mr. Mecham, on modernization, you say you want to decentralize the operating functions when appropriate.

Mr. **Mecham**. Yes.

Mr. **Early**. What would be an example of that?

Mr. **Mecham**. Well, let me describe one thing we are doing currently. There are several categories of operation and maintenance in the courts. In the past we have made allocations for each individual item. Then they couldn't reallocate money between the accounts.

We have, in effect, delegated out to the courts about $52 million in authority, to shift, say, between pencils and furniture, and a number of other items, so they get some greater flexibility. Thus, the courts really have a better opportunity to manage their own enterprise rather than to be in a straitjacket imposed by us in the Administrative Office. We are trying to give them latitude, placing as much in the way of resources at the level where the people actually use them, and giving them responsibility and resources to combine instead of just the responsibility without the resources.

COURTHOUSES

Mr. **Early**. Just one point about GSA and the courts. There has never been a time when courthouses need to be modernized more, both the external security and the automation security. The automation security is a major problem. In Massachusetts, as you know, Mr. Karam, we have a unique situation where we are getting hung up with GSA. We have got a building where Judge Young sits, Mr. Chairman, that GSA says needs $200 million of repair and renovations. So they have to build a new courthouse, which costs roughly $200 million, about $170 million for 450,000 square feet. We can sell the current building for $200 million. We are just tied in there. Everyone stands to win if one agency could sell the McCormack building for whatever it brought, which also reduce the $200 million expense. They could build a new 450,000-square-foot courthouse, and they could build it to meet security requirements. I think the courts are making a major mistake just doing things the way we're doing them. We couldn't guarantee security for a major trial in Massachusetts We were going to have to transfer it to San Diego. That doesn't speak too well for the judicial system because the McCormack building couldn't accommodate it. It was Judge Young who presided at the trial, and he had to move it to Springfield, Massachusetts. It cost us many millions of dollars in security, marshals, et cetera, et cetera. So, you know, we need some major changes.

I conclude with this, Mr. Chairman. In Springfield, Massachusetts, a jail was overcrowded and the sheriff, Sheriff Ashe took his prisoners—the jail was so overcrowded—the courts were saying to the Sheriff let them go. He said I'm not going to let them go. He went in and commandeered the armory, took the prisoners right in and just took over, threw the general out. They are still there. The courts keep giving him orders, but they can't move them out. The general and the Governor, they were going to bring trespassing charges.

The media polled the people. Ninety-four percent were in support of Sheriff Ashe. So we have to make some changes.

Mr. SMITH. What was the armory there for to start with?

Mr. EARLY. I don't know. I don't know what they were doing—— [Laughter.]

Mr. SMITH. Who were they fighting? Are they still fighting?

Mr. EARLY. No. So we used the Army building for housing prisoners. But, I think that really shows that we have to make some major changes, as far as check and balance with the courts. Just as you cited a judge abusing the system, so can GSA abuse the system.

Thank you, Mr. Chairman.

Mr. SMITH. Mr. Kolbe?

Mr. KOLBE. No questions.

[The following questions were submitted to be answered for the record:]

QUESTIONS SUBMITTED BY MR. SMITH

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Staffing Changes

QUESTION:

In FY 1991 you are requesting an additional 51 reimbursable positions. How will these positions be utilized?

ANSWER:

The fifty-one positions will be used as follows:

1. Seventeen positions will be devoted to implementation of the District Court Automation Project (DCAP) and the Bankruptcy Court Automation Project (BANCAP).
2. Twelve positions will be used to improved the reliability and maintainability of Integrated Case Management Systems (ICMS) software. The ICMS software will be upgraded to make it operate more efficiently on the existing hardware.
3. Six positions will be used to support the Data Communications Network. This contract will be awarded in fiscal year 1990 and the network will be pilot tested in fiscal year 1991.
4. Eight positions will be devoted to the Probation Case Tracking System (PACTS). The system will be operational in fiscal year 1990 and in expansion mode in fiscal year 1991.
5. The Office of Automation and Technology is also requesting five administrative management positions (i.e., 2 branch chiefs, 1 secretary, and 2 management analysts) to support the implementation of automation in the courts.
6. The Office of Program Management is requesting an additional three positions for the Fines Center Project.

QUESTION:

The U.S. Sentencing Commission is requesting additional personnel to handle data collection efforts previously performed by the Administrative Office (AO) and other court personnel. Why does the AO plan to cease these data collection efforts? Can you estimate the workyears of effort expended by AO and court personnel in data collection efforts for the Sentencing Commission?

ANSWER:

The Administrative Office (AO) maintains the Federal Probation Sentencing and Supervision Information System (FPSSIS) which includes some information on sentencing factors as well as data on persons under supervision of the Federal Probation System. There are only a few items in the current system which relate to sentencing, and these items are not sufficient to meet the data needs of the Commission. The Commission's request for additional personnel does not result from the AO's plans to eliminate these few data items.

The FPSSIS data system, which was established prior to creation of the Sentencing Commission, was not designed to capture the detailed data required by the Commission. The system was very useful to the Commission in establishing the initial guideline system, since it was probably the only database which contained information on sentencing factors. Once the Commission had some experience with guideline applications, however, it became clear that the number of data items in FPSSIS which related to sentencing was not sufficient to meet their needs. As a result, the Commission began to design their own systems to capture data from the presentence reports, judgment and commitment orders, and the judges' statement of reasons.

Several months ago the AO, with the concurrence of the Commission, eliminated several sentencing items from FPSSIS. We are now planning to eliminate the remaining 10 sentencing items from the system to avoid the necessity of having probation offices report similar data items in two different systems under differing guidelines.

The AO devotes virtually no staffyears to collecting data for the Commission. The probation offices, on the other hand, devote a great deal of time capturing information which relates to the sentencing process. It would be very difficult to estimate how much of the effort is simply data collection for the Commission and how much is data collection for the sentencing judge.

Workload Increases

QUESTION:

You request an increase of $243,000 for travel requirements for several reasons: Why are you changing your audit schedule from a four-year to a two-year cycle? Why are you requesting travel funds for AO personnel to train field office personnel how to use automated systems -- I thought these type costs were to be reimbursed from the Automation Fund?

ANSWER:

The changing of the audit schedule from a four-year cycle to a two-year cycle was based on requests from many of the 200 field organizations to do financial audits on a more regular basis. These requests were based on a desire to improve oversight of current financial operations and implementation of new accounting systems. In order to cover field operations in a timely and consistent manner, the audit schedule must increase from the current level of 50 to 60 financial reviews per year to a total of approximately 100 reviews per year. This will provide the coverage requested by field organizations and ensure up-to-date audits of fiscal operations.

Additional travel funds are being requested by AO personnel to train field office personnel on the use of certain automated systems because the training requires subject expertise in the Central Accounting System and Probation Division operations. The travel costs for these training initiatives have been funded in the Administration and Program Management activities where the employees are assigned who will actually be doing the training rather than under the reimbursable authority in the Automation and Technology activity.

QUESTION:

You request an increase of $582,000 for consultant services contracts. How much have you spent for such services in FY 1989 and 1990 and what is driving the need for this increase in FY 1991?

ANSWER:

In FY 1989 there were $365,000 expenditures planned in consulting services contracts and FY 1990 budget plans include $984,000 for consulting services contracts. Of the $582,000 increase requested in FY 1991, $200,000 will be to support increased timesharing requirements for data storage and CPU usage of the NARDAC computer required for the Central Accounting System, $53,000 for computer programming and software development contracts and $135,000 to fund existing computer equipment LTOP (lease to purchase) for the Administrative Office. Of the remaining amount, $104,000 will fund studies of the Printing and Distribution Facility and the experiment in videotaping court proceedings and $90,000 will be used to contract out for the preparation of an operations manual for clerks' of court and for needed revisions to the existing manual for court reporters.

TUESDAY, FEBRUARY 27, 1990.

FEDERAL JUDICIAL CENTER

WITNESSES

JUDGE JOHN C. GODBOLD, DIRECTOR
CHARLES W. NIHAN, DEPUTY DIRECTOR

Mr. SMITH. We shall next consider the fiscal year 1991 budget request for the Federal Judicial Center. The fiscal year 1991 request is $15,866,000, an increase of $3,381,000 over FY 1990 appropriations of $12,485,000.

We shall insert at this point in the record the justification materials in support of the fiscal year 1991 request.

[The budget justification materials follow:]

THE JUDICIARY

FEDERAL JUDICIAL CENTER

Summary of Requirements

Appropriation 1990 (enacted to date)	$12,648,000
Sequestered pursuant to P. L. 99-177	- 163,000
Budget Authority, 1990	12,485,000
1991 budget estimate	+15,866,000
Proposed Increase	3,381,000

Appropriation Language

FEDERAL JUDICIAL CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90-219, [$12,648,000] $ 15,866,000, of which an amount not to exceed $5,000 is authorized for official reception and representation expenses.

FEDERAL JUDICIAL CENTER
FISCAL YEAR 1991
(Dollar amounts in thousands)

	Summary of Changes:	1991 Request Perm. Pos.	1991 Request Amount
	Appropriation 1990 (enacted to date)	98	$12,648
	Sequestered pursuant to P. L. 99-177	...	- 163
	Budget Authority, 1990	98	12,485
Page No.	Adjustments to base and built-in changes:		
10.7	1. Restoration to appropriation base of amount sequestered pursuant to P.L. 99-177	...	+ 163
10.7	2. 1990 pay cost increase and other adjustments in compensation and benefits:		
10.7	a. Fiscal year 1990 increased pay costs	...	+ 200
10.7	b. Annualization of fiscal year 1990 health cost increase	...	+ 5
10.7	c. Within-grade salary advancements	...	+ 78
10.7	d. Annualization of 1990 Social Security cost increase	...	+ 4
10.7	e. Federal Employees Retirement System (FERS)	...	+ 78
10.8	f. Additional compensable day in fiscal year 1991	...	+ 22
10.8	3. 1991 pay cost increase	...	+ 164
10.8	4. Increase in postage rates	...	+ 10
10.8	5. Increase in lawbook costs	...	+ 2
10.8	6. Increase in space rental rates	...	+ 43
10.8	7. Increase in travel, subsistence, and mileage allowances	...	+ 176
10.8	8. Increase in Federal Telecommunications Services (FTS) costs	...	+ 11
10.8	9. Increase in printing and reproduction costs	...	+ 7
10.9	10. Other increases in contract rates and charges for services, supplies, and equipment	...	+ 79
	Subtotal	...	+ 1,042

Resources for workload increases and improvements in services:

10.9	11. Training and support for new federal court personnel	5	+ 1,284
10.9	12. Training and support for existing federal court personnel.	...	+ 234
10.9	13. Research Division personnel.	2	+ 118
10.9	14. Special Educational Services	3	+ 517
10.10	15. Implementation of two Federal Judiciary History Programs	...	+ 186
	Subtotal	10	+ 2,339
	Total increases requested.	10	+ 3,381
	Total appropriation requested, 1991.	108	$15,866

FEDERAL JUDICIAL CENTER

Obligations by Activity

(Dollar amounts in thousands)

Authorization: Permanent	1990 Appropriation		1990 Adjusted (Base for 1990)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Administration and Support Services	26	$ 3,593	26	$ 3,894	26	$ 3,894	...	$ ...
Education and Training	38	5,833	38	6,527	46	8,508	+ 8	+ 2,221
Research and Systems Development	34	3,059	34	3,106	36	3,464	+ 2	+ 118
Total Obligations	98	$12,485	98	$13,527	108	$15,866	+10	$+ 2,339

Object Classification

(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel compensation	$ 4,746	$ 5,548	$+ 802
12	Personnel benefits	949	1,213	+ 264
21	Travel and transportation of persons	3,885	5,579	+ 1,694
22	Transportation of things	60	63	+ 3
23	Rental payments to GSA	876	919	+ 43
	Communication, utilities and miscellaneous charges	346	440	+ 94
24	Printing and reproduction	222	229	+ 7
25	Other services	705	895	+ 190
26	Supplies and materials	261	275	+ 14
31	Equipment	435	705	+ 270
	Total obligations	$12,485	$15,866	$+3,381

Relation of Obligations to Outlays

(In thousands of dollars)

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$12,485	$15,866	$+ 3,381
Obligated balance, start of year.	2,241	2,372	+ 131
Obligated balance, end of year.	- 2,372	- 3,015	- 643
Outlays.	$12,354	$15,223	$+ 2,869

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	98	108	+10
Total compensable workyears:			
Full-time equivalent employment.	107	117	+10
Full-time equivalent of overtime and holiday hours . . .	1	1	...

General Statement

This appropriation request is for the salaries and operating expenses of the Federal Judicial Center, which was established by an act of December 20, 1967, P.L. 90-219 (81 Stat. 664). This statute directs the Center "to further the development and adoption of improved judicial administration" in the Federal Courts. References to basic statutory authorities are contained in the Digest of Appropriations, The Judiciary, on file with the Appropriations Committees of the Congress and the Office of Management and Budget.

Functional Responsibilities of the Center

The functions of the Federal Judicial Center are outlined in its statute, and include undertaking research on Federal judicial administrative problems, primarily those identified by the courts, the Judicial Conference of the United States, and its committees; conducting programs of continuing education for judges and other personnel of the Judicial Branch; and presenting recommendations to the Judicial Conference for improved administration and management in the United States courts (28 U.S.C. 620 (b)). These functions are undertaken under the general guidance of the Center's Board. The Administrative Office of the United States Courts, created by statute in 1939, provides administrative support, management support, and policy guidance to the Federal Courts. Although the Center is an autonomous agency, it works closely with the Administrative Office to ensure that the Courts have the benefit of modern management tools and procedures.

Composition and Duties of the Board

The Center is supervised by a Board of eight, two of whom serve ex officio. The Chief Justice of the United States is the Board Chairman, and the Director of the Administrative Office of the United States Courts is a Board member. The Board also includes two active judges of the Courts of Appeals of the United States, three active judges of the District Courts of the United States, and one active bankruptcy judge, each elected by the Judicial Conference of the United States for four-year terms. By statute, the Board is responsible for developing overall policy to guide the Center's operations, and to that end, the Board appoints a Director and a Deputy Director, who are responsible for supervising the Center's staff and carrying out the Center's programs.

Proposed Language Change

We ask that the appropriation language be amended to provide for authorization of an amount, not to exceed $5,000, for official reception and representation expenses. This will provide the Director of the Center with the authority, similar to that provided to the Supreme Court and the Administrative Office, to pay expenses associated with official functions such as a "working meal" with visiting judges of other countries.

Justification of Changes

The Federal Judicial Center requests for fiscal year 1991, a total appropriation of $15,866,000, an increase of $3,381,000 in budget authority over the appropriation for fiscal year 1990. Excluding mandatory inflationary increases and adjustments to the base ($1,042,000), the net increase in budgetary requirements is $2,339,000 or 19 percent. Details regarding these requested increases follow.

Item 1. Restoration to Appropriation Base of Amount Sequestered Pursuant to P.L. 99-177 ($163,000)

In accordance with the sequestration procedures authorized in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) and the Reconciliation Act of 1989 (P.L. 101-239), a reduction of 1.4 percent in non-exempt budget authority was imposed in fiscal year 1990. The sum of $163,000 has been included in this request to restore the sequestered amount to the appropriation base.

Item 2. 1990 Pay Cost Increase and Other Adjustments in Compensation and Benefits

This item includes increased fiscal year 1990 pay costs as well as other adjustments in personnel compensation and benefit costs.

a. Fiscal Year 1990 Increased Pay Costs ($200,000)

In accordance with P. L. 101-136, Judiciary employees received a 3.6 percent pay increase effective the first pay period beginning on or after January 1, 1990. The cost of this pay increase on an annual basis is $200,000 ($171,000 in personnel compensation and $29,000 in related benefits). The increase for nine months ($150,000) was absorbed in 1990 however, the full amount ($200,000) is required in 1991.

b. Annualization of Fiscal Year 1990 Health Benefit Cost Increase ($5,000)

The amount of $5,000 is included to annualize three months of increased health benefit costs which were effective in January 1990.

c. Within-Grade Salary Advancements ($78,000)

Personnel at the Federal Judicial Center are entitled to periodic increases in compensation. It is estimated that these salary advancements will cost $78,000 during fiscal year 1991 ($67,000 for personnel compensation and $11,000 for related benefits). The estimate is based on past experience and takes into account savings due to turnover of personnel and the filling of vacancies at lower rates of pay.

d. Annualization of 1990 Social Security Cost Increase ($4,000)

Increases in January 1990 of the Social Security tax rate from 7.51 percent to 7.65 percent and in the maximum wage base upon which the taxes are paid from $48,000 to $50,700 will result in an annual increased cost to the Judiciary of approximately 7.37 percent. The sum of $4,000 is included to annualize three months (1.84 percent) of the increased cost.

e. Federal Retirement System (FERS) ($78,000)

All federal employees hired after December 31, 1983 have been covered under the Federal Employees Retirement System (FERS) rather than the Civil Service Retirement System (CSRS), and all subsequent positions requested have been considered as FERS positions for purposes of budgeting the increased retirement contributions inherent in the system. In addition, as positions filled by CSRS employees become vacant they are increasingly filled with employees covered under FERS. This normal turnover is estimated to result in a 19 percent cost increase applicable to the total FERS related costs, which include: FERS contributions, Basic Thrift Fund contributions, Matching Thrift Fund contributions and the FICA contributions particular to FERS employees (not Medicare contributions). The sum of $78,000 has been included to provide for this increased cost in fiscal 1991.

f. Additional Compensable Day in Fiscal Year 1991 ($22,000)

The total number of compensable days in fiscal year 1991 is 261 as compared to 260 days in 1990. The sum of $22,000 ($19,000 for personnel compensation and $3,000 for related benefits) is included to fund this additional compensable day.

Item 3. 1991 Pay Cost Increase ($164,000)

It is expected all federal employees will receive a 3.5 percent pay increase effective in January 1991. The cost of this pay increase on an annual basis is estimated to be $218,000 ($186,000 in personnel compensation and $32,000 in related benefits). The amount of $164,000 ($140,000 in personnel compensation and $24,000 in related benefits) is required to provide for nine months of this increase in fiscal 1991.

Item 4. Increase in Postage Rates ($10,000)

It is anticipated that the Postal Service's Board of Governors will vote to increase postage rates an average of 12.5 percent and that the proposed rates will be approved and become effective during the summer of 1990. The sum of $10,000 is included to provide for the estimated impact of this increase.

Item 5. Increase in Lawbook Costs ($2,000)

The average annual increase in cost for lawbooks has been about eight percent over the past five years and it is anticipated to be eight percent in fiscal 1991. The sum of $2,000 is included to meet this increase.

Item 6. Increase in Space Rental Rates ($43,000)

The sum of $43,000 is included for fiscal year 1991 to cover increases in rent for existing space assessed by the General Services Administration. The rental cost of space occupied by the Federal Judicial Center is anticipated to increase from $876,000 in fiscal 1990 to $919,000 in fiscal 1991, an increase of 4.9 percent.

Item 7. Increase in Travel, Subsistence and Mileage Allowances ($176,000)

It is estimated that an additional 4.3% will be required in fiscal year 1991 to cover increased charges for travel and subsistence. The allowance for mileage paid for official travel in privately-owned vehicles has been raised from 22.5 cents to 24.0 cents, an increase of 6.7 percent. The sum of $176,000 is requested: $158,000 for increases in travel and subsistence rates and $18,000 for the increased allowance for mileage paid for official travel in privately-owned vehicles.

Item 8. Increase in Federal Telecommunications Systems (FTS) Costs ($11,000)

Based on information provided by the GSA and actual prior year increases, it is estimated that Federal Telecommunications Systems (FTS) costs will increase 10 percent in fiscal year 1991. The sum of $11,000 is requested to provide for the increase.

Item 9. Increase in Printing and Reproduction Costs($7,000)

It is estimated that printing and reproduction costs will increase approximately 7 percent in fiscal year 1991. The sum of $7,000 is included to provide for the increase.

Mr. SMITH. Judge Godbold, do you have a statement?

Judge GODBOLD. Mr. Chairman and members of the committee, I——

Mr. SMITH. We will put it in the record if you want us to.

Judge GODBOLD. Yes, I would like to put my statement in the record.

[The prepared statement of Judge Godbold follows:]

STATEMENT OF
HONORABLE JOHN C. GODBOLD
DIRECTOR, FEDERAL JUDICIAL CENTER
TO THE
HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE AND STATE, THE JUDICIARY, AND RELATED AGENCIES

Honorable Neal Smith, Chairman

February 27, 1990

Mr. Chairman, it is my privilege as Director of the Federal Judicial Center to present the Center's fiscal year 1991 budget request.

Over the years, the Center has been conservative in requesting additional funds from the Congress, doing so only when we could not fulfill our statutory obligations with available resources. Indeed, during the past decade the number of judicial officers and employees to whom the FJC provides education, research and systems development services has increased seventy-three percent—from 14,011 in 1980 to 24,236 in 1990—while during this same time the authorized staff of the Center has actually declined by more than 16 percent, from 117 in 1980 to 98 in 1990. Similarly, the FJC's budget as a percentage of the judiciary's budget has been cut almost in half during the past decade. In fiscal 1980 the FJC budget was 1.44 percent of that of the judiciary. In 1990 it is less than 1 percent—0.75 percent to be exact.

Mindful of the necessity for continued fiscal restraint, yet remaining faithful to the obligations imposed on the Center by statute, we are requesting a fiscal 1991 budget of $15,866,000, an increase of $3,381,000 over the amount authorized for Center operations in fiscal year 1990.

Approximately one-third ($1,042,000) of the requested fiscal 1991 increase results from adjustments to the Center's appropriations base. Of that amount, $163,000 restores the amount sequestered in fiscal 1990, and $879,000 provides for inflation and uncontrollable increases in cost for items such as employee compensation, GSA rent charges and Federal Telecommunication System charges.

The remaining two-thirds ($2,339,000) of the requested increase will allow the Center to fulfill its statutory obligation to provide education and training services to most of the 1,849 new personnel requested in the judiciary's fiscal 1991 budget, to provide additional training to existing personnel, to improve our video production capabilities, and to begin to meet our federal judiciary history responsibilities.

Specifically, $1,284,000, and 5 positions, are requested to provide training and support to new personnel requested by the courts in fiscal 1991. The requested resources will allow most of the new personnel to attend orientation seminars and workshops immediately after their appointment, and to participate in skills development and maintenance training workshops in subsequent years.

$234,000 is requested to provide automation training for existing court managers, and to provide executive development training for active judges and senior court administrators.

$118,000 is requested to add two research associates to our Research Division so that we may expand the dissemination of research findings and systematically analyze time study data that is now being collected.

$517,000 is requested to provide increased summer educational opportunities for federal judicial officers, and to allow us to add three staff members to our Media Production Unit. The requested funds will enable the media unit to convert our video production and editing systems to digital format. This conversion will allow us to produce quality educational video programs for personnel throughout the judicial branch.

Video programs allow us to reach a greater number of persons each year than would otherwise be possible, and to do so in a cost-effective manner. For example, many of our videos are used to support training programs presented at the local court level by court personnel who we trained for this task. Ten years ago Center supported local training programs reached only a handful of those employed by the judiciary. During fiscal 1989, however, 120 local programs were presented, providing instruction to 5,141 persons. We are proud of this accomplishment.

Finally, Title III of the Judicial Improvements and Access to Justice Act (P.L. 100-702) authorized the Center to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government." $186,000 is requested to allow us to undertake two modest judicial history projects.

* * *

My associates and I will be pleased to try to answer any questions you or other members of the subcommittee may have about the Center's appropriations request or any aspect of Center operations.

Judge GODBOLD. I would like to really make one point.

Mr. SMITH. All right.

Judge GODBOLD. Well, two points. This is a small budget compared to the big figures you have been dealing with. We have been pretty conservative in our budget requests over the past decade. In the past decade, the number of people in the constituency the Center serves has increased about 75 percent, from 14,000 to 24,000. During that same decade, the Center is the rare agency that has shrunk in personnel. Our personnel have shrunk from 117 in 1980 to 98 in the present fiscal year.

WORKLOAD

Mr. SMITH. Their workload isn't directly tied to the number of judges, is it?

Judge GODBOLD. No, sir.

Mr. NIHAN. But, Mr. Chairman, it is tied, though, to the number of personnel in the court system. We have responsibility for providing education and training services to all of them.

Mr. SMITH. Oh, I see.

Judge GODBOLD. We are asking for an increase of $3,381,000. Now, let's see what is in it. About a third of it is adjustments to base. I won't dwell on that. About two-thirds of it relates to the obligations we have for training and research. $1,284,000 is what we need in the 1991 budget to train in the 1991 year the new personnel that are asked for in the courts budget. It is 1,800-plus new positions that are sought to be added into the court system under the courts budget. We are asking for the funds to train those people for the 1991 year, give them their initial training and indoctrination and the training they need to go on to the job.

TRAINING FUNDS

Mr. SMITH. Why shouldn't that be in the courts' budget rather than yours? They may make the decision on whether they want to train them or if they prefer some equipment changes instead or something else, don't they?

Judge GODBOLD. Well, we wouldn't train them if the courts didn't want them trained. But the main reason, or the compelling reason that it is not in the courts budget is that education and training is assigned by statute to the Judicial Center and not to the Administrative Office of the Courts. Traditionally, funds for education and training have been part of the FJC budget.

Now, for the current fiscal year, in a one-shot approach, the Judicial Conference Committee, when the budget reached there, I think found that personnel had been authorized, but the money to train with had not been authorized. And the Conference Committee adopted an authorization that funds in the courts budget could be used to the extent of a little over a million dollars to train the new 1990 hires.

Mr. SMITH. It is in the courts' salaries and expenses account. Why isn't that a good place for it to be?

Judge GODBOLD. Well, it is in there because of last year's anomaly. The reason it shouldn't be there is because by statute this is a function that the Center performs.

Mr. SMITH. Maybe the statute needs to be changed, but this is a practical matter. What's the best place for it to be?

Judge GODBOLD. Well, I think the best place for it to be is in the Center. Congress made an advisory decision in the late 1960's when it created the Center that research and training should be centered in an independent agency, which the Center is. We are not in the line of authority of the Judicial Conference or the Administrative Office, nor are we in the line of authority of the courts.

Mr. SMITH. What are the benefits of having it in the Judicial Center instead of the way it is being done in 1990?

Judge GODBOLD. Well, I think the main reason is—the reasons are two. It is a sense that these functions can best be performed by an agent which is independent of day-to-day operations. Congress certainly had this in mind in the 1960's. You see, we are administered by a board composed of the Chief Justice, six judges, and the head of the Administrative Office. We are, of course, responsive to ideas and suggestions from the Judicial Conference. We are in constant liaison with the Conference and with our friends at the Administrative Office. But we are not in the line of authority.

Not only is the job done better, it can be done in a detached way in the sense that we can make independent decisions that might not always necessarily be quite the same if we were in the line of authority. That is true of both our educational activities and our research activities.

Mr. SMITH. You said you had two reasons. What is the other reason?

Judge GODBOLD. Well, I suppose they are interrelated, Mr. Chairman. One is the desire for an independent agency that can take independent action, free of the traditional or other lines of authority. The second one is that it is what the Congress had in mind in the 1960's, and I think it is sound: that in times of fiscal difficulty, functions like education and research may, through no bad intent on anybody's part, get squeezed out of operational budgets. And Congress made the decision to keep them separate.

Mr. SMITH. Now, that million dollars is in the base. So why do you need another million in 1991?

Judge GODBOLD. Well, because there are two groups of people. The million dollars in the courts' base for 1990 was for training for 1990 hires, new people.

Mr. SMITH. But it's in their base.

Judge GODBOLD. But, you see, we are going to have a new group of 1,800 people hired in 1991, if the courts' budget is approved, to whom we must offer initial training.

Mr. SMITH. If they've got a million in their base, then they are going to get a million dollars. Are you saying they are going to have $2 million then: the million in the base plus another million?

Judge GODBOLD. Well, we have got to do two things. We have got to offer continuous training to the people that the courts hired in 1990, and we have got to give initial training to a new group that is going to be employed in 1991.

To give you a simple example, probation officers who were hired in 1990, who got initial training, but we've got to have—we need funds to continue the training of those 1990 class in 1991.

Mr. SMITH. Are you saying you need both the million that is in the base plus an additional million?

Judge GODBOLD. That is correct, because these are new people for whom we have no funds.

Mr. SMITH. Aren't the others already trained?

Judge GODBOLD. Well, they have had their initial training, but we are now——

Mr. SMITH. How long of a training program is this?

Judge GODBOLD. Most people in the Federal judicial system, it is now either annually or every two years, some type of supplemental training. Training of probation officers now is almost an ongoing matter because they have so many matters that they are learning under the new Sentencing Guidelines system.

Mr. SMITH. Mr. Rogers?

SENTENCING GUIDELINES TRAINING

Mr. ROGERS. Now, let me ask you about the training programs and so forth related to implementing the Sentencing Guidelines. The U.S. Sentencing Commission also provides training for proper implementation of those guidelines.

Judge GODBOLD. That is right, sir.

Mr. ROGERS. How do your education programs for Sentencing Guidelines differ from those provided by the Sentencing Commission? And are both necessary?

Judge GODBOLD. Well, the programs that we offer are primarily directed, mostly directed at judges, and, to a degree, to probation officers. Our programs are given at workshops and seminars for judges. Those are the workshops and seminars for new judges; and also those given about once a year in each judicial circuit for all judges, new and old; and also in workshops and seminars for magistrates to the extent they have any interplay in this system; and for staff attorneys.

Now we are intending to emphasize the training in the developing case law. When the Sentencing Guidelines began in preparation, in 1987 and early 1988, we combined forces with the Sentencing Commission and, under our informal joint operation, put on a crash program over the country to train almost 5,000 people in a few months, a lot of it done with videos. It was done also at nominal cost instead of the usual $800 to $1,000 a person. It cost us about $60 a person.

But now the Sentencing Commission is—Judge Wilkins can speak to this better than I can, but is largely directing its efforts not to the developing case law, but to the implementation in other senses of the guidelines: how does the probation officer operate, what does he do, how does he perform his function and so on. We are focusing on what is the developing case law telling judges that they must do.

Now, we also train probation officers. In fact, this is one of our largest undertakings. To an extent, perhaps we overlap a little bit with the Sentencing Commission, but I think not. Our programs usually employ people from the Administrative Office of the Courts who administer the probation office system, judges, probation officers, and usually a representative from the Sentencing Commission—all directed at telling the probation officer how to do his job.

Mr. **Rogers**. Shouldn't all the training be done either by one or the other?

Judge **Godbold**. I don't think so. I think we complement each other pretty nicely. We started off working together, and we have continued to work together.

Mr. **Rogers**. Well, we want you to work together. We want you to be nice and friendly. But we are talking about spending the taxpayers' dollars here. Wouldn't it be more efficient if one or the other of you did all of the training of these people?

Judge **Godbold**. I don't think so because we've got different missions. The mission of the Sentencing Commission is not in terms of the developing case law. It is not responsible for the law. It is responsible——

Mr. **Rogers**. Tell me what you mean by developing case law.

Judge **Godbold**. The decision or law as judges decide, make decisions about the Sentencing Guidelines.

Mr. **Rogers**. Are we talking substance versus procedure?

Judge **Godbold**. That is probably a fair sort of——

Mr. **Rogers**. You are doing substance; they are doing procedures?

Judge **Godbold**. To a large extent, that is true.

Mr. **Rogers**. What portion of your budget can you attribute to the Sentencing Guidelines training?

Judge **Godbold**. I would have to give you that later.

Mr. **Rogers**. Just give me a rough idea. Is it a very, very small part, or is it substantial?

Judge **Godbold**. It is a pretty substantial part, and I will give you an exact figure on that.

[The information follows:]

SENTENCING GUIDELINES TRAINING

In fiscal year 1990 the FJC will spend approximately $570,000 on Sentencing Guidelines training.

Judge **Godbold**. Now, if I can divert a minute, we are doing a good bit of the training of probation officers—and we do a lot of that—by videotapes, which is the inexpensive way to do it.

Mr. **Rogers**. That is all.

Mr. **Smith**. Mr. Early?

Mr. **Early**. Thank you.

TRAINING FUNDS

Judge, I couldn't quarrel with Chairman Smith. We are going to put a million dollars in the 1990 budget for training and then a million in the 1991 budget, which you say is for continuing training. I thought the thrust of the Center was to provide them with initial training. But, now you are asking for three million dollars next year—a million for the ones in this class, a million for the ones that were trained this year, and a million for the new ones? How long are we going to fund training for these judges?

Judge **Godbold**. Well, here is the way it works for judges. For a new judge that comes on, a new district judge is the best example. He gets two weeks of orientation and training. One week is done with videotapes under the supervision of usually a well-known and a highly skilled judge. I call them the "old pros" who know how to solve the problem.

Mr. **Early**. Fine.

Judge **Godbold**. The second week they are brought to Washington to the Judicial Center where they receive a week of face-to-face training. That is one program. There is a second program in which in each circuit each year there is a workshop or seminar, whatever you wish to call it, for all the judges in the circuit.

Mr. **Early**. All right. So this is the same judge that we just had in two weeks of in-house training, and then we're sending him—

Judge **Godbold**. He is one along with all the other judges.

Mr. **Early**. All the other judges.

Judge **Godbold**. Then there are similar programs for new bankruptcy judges, for new magistrates as they come on, and also supplementary programs for them each year, which may or may not be by circuit. They may be by some other kind of geographical conformation, but they are yearly supplemental programs adding to their annual training. It's an ongoing training.

Mr. **Early**. Why do they have ongoing training when they are in the courtroom? I can see the justification for what you are suggesting for the first year. But you want to put another million in the base for the second year for those same people. How much——

Judge **Godbold**. We are talking about a lot of people other than judges, which is what I am trying to——

Mr. **Early**. Yes, but when you talk about workshop training can't they get that on TV, from one of those programs? We are getting pinched on money. I am a firm believer in training, a firm believer in probation training. Okay? But where does it end?

Judge **Godbold**. Well, I don't think that—that is not the thesis we are working under. We are working under the thesis that a professional corps of people—judges, senior administrators, senior clerical people—need continuing education in the same way that a lawyer in practice needs CLE. And we are trying to meet that need.

Mr. **Rogers**. Joe, we need a study. [Laughter.]

Mr. **Early**. That is what we are saying. We've got to have an end point. The chairman spoke about probation officers earlier needing this modern—back then we said that someone was out on parole and now it is called supervised released. There is some adjustment to the new probation arrangement obviously, but give them one year at it. We are going to be sending them to computer school; we are sending them to workshops; we are sending them to Washington.

Judge **Godbold**. Well, I would just have to say to you that people out in the field think it is very useful and worthwhile.

Mr. **Early**. The judges?

Judge **Godbold**. The judges, the clerical personnel.

Mr. **Early**. I have never had any one of my constituents come up to me and say, "Joe, you're doing the right thing, keep training them." [Laughter.]

I really just can't follow that. A million dollars, fine. A million dollars for a new class, fine, but I have difficulty after that.

Thank you, Mr. Chairman.

Mr. SMITH. Mr. Kolbe?

Mr. KOLBE. No questions.

Judge GODBOLD. Let me see if I can ease Congressman Early's pain just a little bit. We are doing a lot of training, which is the great unexplored area of teaching people how to do a job and to do it better. And this is a continuing matter. Doing it at the local level, not from inside the Beltway. Ten years ago, the number of local programs was so small that we don't even have a record of it. Now, we have hundreds of local programs every year training in the thousands of people.

What do we do? We bring somebody to Washington from each district court for a week and teach him to put on a program. Then we furnish him with a video, with workbooks if he needs them, with a program plan if he needs it, with citations if he needs it. We may give him a couple of hundred dollars to hire an expert if he needs it. Then he puts on the program in his district for the people who need it.

Mr. SMITH. For what kinds of personnel are you talking about now?

Judge GODBOLD. Clerical persons, probation officers, sometimes judges, all sorts of people within the system.

It does two things: It educates people in a particular subject matter for a cost of $60 or $80 a head; whereas, it costs $700 or $800 to $1,200 to bring them to a seminar. It also involves the local people in the educational process.

Now, there is an ongoing need. Every district court every year will get new people performing administrative supervisory jobs who never supervised anything before. We will assign new people to teams to administer the records for, let's say, the State of X or the State of Y. Persons are in charge of teams from three to eight to 12 people who may never have run a team before for any endeavor. It is a help to those people to be taught how to perform team services. How do you lead people? How do you tell them to do things? What do you do for them when they don't do it? This is the sort of thing that there is a tremendous demand for.

The Federal Court Study Commission, one of its recommendations will be increased training for new chief judges, district and circuit, in their administrative tasks, and we have already started on this. How do you teach a judge to be an administrator? We have proceeded for all these years on the tacit assumption that because a person was a judge he was also an administrator. Some judges are lousy administrators. So we are just beginning to try to meet that need to teach new judges at least some fundamentals, some fundamental understanding of how they administer. The same type of thing is true throughout the system.

Another reason that we need recurring training is that nearly every year judges are getting new training in new subject matter. The law relating to section 1983 changes every time the Supreme Court meets. The development of the guidelines, somebody has to be taught this. The law evolves and changes, and we try to keep the judges up to date.

Item 10. Other Increases in Contract Rates and Charges for Services, Supplies, and Equipment ($79,000)

An additional $79,000 is required in fiscal year 1991 to cover increased charges for services, supplies, and equipment. This projection is based on anticipated increases in expenditures at an estimated rate of 4.3 percent.

	FY 1990 Amount Available	Projected Cost	Increase
Transportation of things. . . .	60,000	63,000	3,000
Other rent, comm. and utilities. . . .	315,000	329,000	14,000
Other services . .	706,000	736,000	30,000
Supplies and materials. . . .	321,000	335,000	14,000
Equipment.	417,000	435,000	18,000
TOTAL			$79,000

Item 11. Training and Support For New Federal Court Personnel ($1,284,000)

The sum of $1,284,000 is requested to provide training and support to new federal court personnel (deputy clerks and probation/pretrial services officers and probation/pretrial services clerical staff) requested in the United States Courts' fiscal 1991 budget. Of this amount, $941,000 is required for travel and subsistence to allow the new personnel to receive orientation training immediately following their appointment, and to participate in subsequent skill development training sessions; $129,000 is required for the rental of meeting facilities and audio/visual equipment for these training programs and for other related training purposes; and, to conduct this training, $214,000 ($168,000 in compensation and $46,000 in related benefits) is requested for five additional staff members -- three GS-13 level professionals and two GS-7 clericals.

Item 12. Training and Support For Existing Federal Court Personnel ($234,000)

The sum of $234,000 is requested to provide support to federal court personnel. Specifically, we propose to provide automation training for court managers and executive development training for judges and senior court administrators. Of this amount, $184,000 is required for travel and subsistence and $50,000 for rental of meeting facilities, rental of audio/visual equipment and faculty honoraria.

Item 13. Research Division Personnel ($118,000)

The sum of $118,000 ($85,000 in compensation, $23,000 in related benefits, and $10,000 in travel and subsistence) is requested for two GS-13 level research associates. These additional staff members will enable the Center's Research Division to expand the publication and dissemination of research findings and systematically analyze time study data.

Item 14. Special Educational Services ($517,000)

The sum of $517,000 is requested to support the increased demand from judges and supporting personnel for the education and training services provided by the Division of Special Educational Services. Of this amount, $250,000 is required to convert the Center's video production and editing systems from analog to digital format thus allowing the Center to take advantage of new video technologies to produce superior quality educational video programs; $117,000 is required for two GS-9 level media production positions and one GS-13 level staff associate to meet the increased production of instructional media packages anticipated in 1991; and, $150,000 is requested

($110,000 in travel and subsistence and $40,000 in tuition) to increase the opportunities for federal judicial officers to attend summer educational programs.

Item 15. Implementation of two Federal Judiciary History Programs ($186,000)

Title III of the Judicial Improvements and Access to Justice Act, (P.L. 100-702) authorized the Center to "conduct, coordinate and encourage programs relating to the history of the judicial branch of the United States Government". $186,000 is requested ($76,000 in compensation and related benefits for two historians for one-year appointments and $110,000 in travel and subsistence) to implement and conduct an Oral History Program and to gather nineteenth and early twentieth century federal court caseload levels into a usable format for scholars and judges.

Can I answer anything further?

Mr. **Smith**. I guess not. [Laughter.]

Judge **Godbold**. Thank you very much.

[The following questions were submitted to be answered for the record:]

QUESTIONS SUBMITTED BY MR. SMITH

FEDERAL JUDICIAL CENTER

FISCAL YEAR 1991 BUDGET REQUEST

Training of Court Personnel

QUESTION:

Should not those individuals responsible for determining training requirements (in this case the courts) also be the ones who budget and pay for the cost of that training?

ANSWER:

The courts themselves do not have responsibility for determining training needs. Rather, the Federal Judicial Center has the statutory responsibility to determine and implement the training needs of federal court personnel. Under 18 U.S.C. § 620(b)(3) one of the Center's functions is "to stimulate, create, develop and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, clerks of court, probation officers, and United States magistrates." This responsibility was placed in the Center by Congress in 1967, when Congress and the judiciary recognized the necessity for such education and training.

The Board of the FJC has oversight of this education and training function. The function is separate from, and in sharp contrast to, the responsibilities of the Director of the Administrative Office, under 28 U.S.C. § 604-605, to provide a range of support services to the courts.

In carrying out its education and training responsibility the FJC seeks input from many sources: from surveys of judicial officers in place, from staff in the Administrative Office who administer the affairs of discrete groups of judicial employees--for example, the head of the Magistrates Division for suggestions about training for magistrates; from the relevant committees of the Judicial Conference; from committees constituted from the employees themselves; from the expertise of its own staff and other recognized experts in personnel and training. But all concerned--employees, Administrative Office, Judicial Conference and its committees, and the courts--recognize that continuing education and training is primarily the responsibility of the Center. And the Center has recruited a talented and respected staff in its Continuing Education and Training and its Special Educational Services Divisions.

The education and training duties of the Center reach to both new hires and personnel in place. With respect to new hires, empirical data and processes of the Judicial Conference and the AO may inform the AO to request authorization and funding for a designated number of new personnel--the hiring of additional probation officers is a good current example. The AO does not, however, define what new probation officers should learn to become properly oriented to their new jobs. Indeed it is not staffed or equipped to do so. The FJC, with input from sources just mentioned, would define what training the new officers may need. For example, in FY-1990 training offered for new probation officers included: Supervising drug and alcohol abusers, financial investigation techniques, bail investigation and verification, presentence investigations, and legal issues associated with supervision and investigation. The FJC also offers intensive training in guideline sentencing, but this subject is only one part of our comprehensive training program for probation officers.

Training of personnel already in place is a discrete part of FJC responsibility. Caseloads, and numbers of judges, grow and must be managed. Court management, once a limited duty, has become a science. Judges and senior administrators must learn how to put to best use the computer systems now in place. New and better techniques of caseload management are constantly evolving. Judges work regularly and with differing techniques to control and mitigate abuses of discovery. New substantive law is created by Congress and by court decision, sometimes complex, changeable and changing, and difficult--such as RICO, sanctions under Rule 11, guideline sentencing, and habeas corpus. Alternative dispute resolution methods are authorized or urged by Congress, the judiciary, and other elements of society; the methodologies are numerous and varied in approach; they must be learned and tried. Skills in new and changing areas such as these are not known intuitively to judges and other employees. For judges to learn them ad hoc on the job is duplicative and wasteful of precious time and effort, and produces error and non-uniformity. Judges and other employees gain from meeting together, examining the materials assembled for them, listening to instruction by judges and scholars in the relevant field, and learning together. They benefit immensely from discussion among themselves and from sharing of ideas and experiences.

Some of the 1990 training offered to judicial employees, old and new, include, for probation officers, staff safety, financial investigations, testifying skills and writing skills. All of these except staff safety are new subject matters occasioned by changes in duties as a result of the guideline sentencing system. Staff safety training is occasioned by increased risks to and harms to probation officers in carrying out their duties in a time of rising crime and violence and by demand for this training from within the probation service itself.

For judges in place, 1990 training included developments in employment discrimination law, imposition of sanctions under Rule 11, constitutional torts, federal abstention, and developments in the Federal Rules of Evidence. Additionally, judges are informed of the rapidly developing guideline sentencing case law. (This does not involve the procedural guidelines training offered by the Sentencing Commission.) During the first two months of 1990, alone, 130 circuit court opinions dealing with guideline sentencing were issued. Virtually every sentence imposed by district courts involves the interpretation and application of sentencing guidelines.

QUESTION:

You also request $234,000 for training for existing court personnel. This is not a new requirement. Why do you require this increase?

ANSWER:

We request the $234,000 for two purposes, aimed at new needs:

First, to provide automation training for court managers. As the Long Range Plan for Automation is implemented, senior federal court personnel require intensive training on how to utilize and manage this new tool effectively. This training requirement did not exist a few years ago. The FJC has experimented with pilot automation training, and it has proven to be valuable. Now that the need for it is clear, we are requesting funds to offer it on a regular basis.

Second, to provide executive development as well as skills development training to judges and senior court administrators. In a few months we will provide the first formal training for new district chief judges. We do so at the request of many experienced district and circuit chief judges who have said that such training would have been extremely beneficial to them when they first took office. The judiciary needs to put aside the tacit assumption of the past that judges who have not previously managed courts, and indeed may not have had any managerial experience, can become effective managers overnight or by trial and error. Rather, they can learn more effectively and more quickly from administration experts and from each other through shared problems and experiences. Even judges who are already capable managers now have computers available, and they must learn to make them tools of management.

This summer we will offer the first intensive managerial skills development training to senior court administrators. We will reach only 30 managers with this first effort. We are requesting funds to allow such training to be presented on a regular basis.

QUESTION:

How much is in the Federal Judicial Center's FY 1990 base for training of existing court personnel?

ANSWER:

$5,833,000 of the Center's total budget is devoted to education and training. Of this amount, $1,688,000 pays the salaries and operating expenses of our education and training personnel. $3,825,000 is available to provide seminars and workshops to the more than 24,000 personnel in the judicial branch, and $320,000 is available to provide them with video training services.

Other FY 1991 Increases

QUESTION:

You request $118,000 for two additional research assistants. Please describe the need for these two positions. Are you planning any new major research initiatives in 1991?

ANSWER:

The two new positions will allow us to analyze the data collected as part of our District Court Time Study and to evaluate alternative dispute resolution programs. The new research initiatives we plan in 1991 are:

(1) An in-depth evaluation of data collected during our District Court Time Study. This study was undertaken at the request of the Judicial Conference of the United States to update the case weights used to determine the number of judgeships required in each judicial district. We will analyze the relationships between demands on judicial time and the various court and case management systems in use throughout the country.

(2) An evaluation of alternative dispute resolution programs, including the voluntary programs authorized for federal trial courts by recent legislation. We will focus on learning why litigants chose arbitration, or other forms of alternative dispute resolution, instead of traditional judicial processes.

(3) An evaluation of a pilot program to use videotape as the means of making the record in federal trial courts. If successful, this technology could minimize the need for transcript production in the federal trial courts.

(4) A study of case management procedures in mass tort litigation, with special attention given to aggregation of claims.

QUESTION:

You request $517,000 for educational services, which primarily involves video technology. How much funding was provided for video training in FY 1990?

ANSWER:

Approximately $320,000 is available to provide video training in fiscal 1990. This expense of providing training does not include expenses of producing videos, such as staff salaries, video studio rental costs or equipment acquisition and maintenance costs.

Of the $517,000 requested in fiscal 1991, $250,000 is required to replace our aging video camera equipment, and $117,000 is required to fund the salaries of three additional video production personnel.

QUESTION:

To what extent has video training supplanted or supplemented traditional training?

ANSWER:

Video training has supplanted traditional training in a number of areas. Examples include:

(1) Training of Probation/Pretrial Services Officers. For these officers, four major programs have been developed and presented. These programs, and the number of persons trained are:

-Staff Safety--110 times/2800 officers
-Financial Investigations--121 times/1590 officers
-Testifying Skills--75 times/1,786 officers
-Writing Skills/Presentence Rpts--27 times/603 officers

(2) Guideline Sentencing Orientation: FJC videos, FJC written exercises and explanatory material, and FJC train-the-trainer seminars allowed almost 3,500 judges and judicial personnel, and over 1000 prosecutors and members of the private bar, to be trained in a very short time span. This was done in cooperation with the Sentencing Commission.

(3) Computer Security Act of 1988: FJC videos allowed the training required by the law to be done at the local level without the need to use costly Office of Personnel Management seminars or out-of district FJC seminars.

Video training frequently supplements traditional training. Examples include:

(1) New District Judge Orientation: New district judges attend a 4-day video regional seminar as soon as they go on bench. Only live faculty at these seminars is one experienced district judge. The use of video training has allowed us to almost double the amount of orientation training for new judges at a much lower cost.

(2) Video Orientation Programs have also been prepared to orient new bankruptcy judges and magistrates. As with district judges, this training has proven to be valuable and cost effective.

(3) Computer Training for Bankruptcy Courts: Now a deputy clerk's initial computer training is completed using video presentations in the trainee's local court before attending courses at one of the Computer Training Centers. This initial video computer training will be expanded to district courts when resources are available.

QUESTION:

How has the use of video training presentations impacted on the FJC training budget? Are you able to provide the same amount of training for a lower cost?

ANSWER:

The use of video programs has allowed the Center to provide much more training than would have been possible using traditional seminars. For almost five years we have had insufficient funds to allow line probation officers to participate in traditional seminars. However, FJC produced videos have allowed us to train over 6,700 officers in four important subjects--Staff Safety, Financial Investigations, Testifying Skills and Writing Skills and Presentence Report Writing.

The use of videos in sentencing guideline training, conducted in cooperation with the Sentencing Commission, allowed us to train almost 3,500 judges and judicial personnel, and over 1000 prosecutors and members of the Bar, for approximately $48 per person trained. Traditional seminars would have cost about $1,000 per person.

FJC produced videos have also resulted in savings in our new district judge, bankruptcy judge and magistrate orientation programs. For example, it costs about $1,500 to bring a district judge to Washington for the FJC's live orientation seminar. The total cost of bringing a new district judge to a video orientation seminar is approximately $900.

QUESTION:

What is the purpose of your language requirement for authority to spend up to $5,000 for official receptions and representation Expenses? Why do you require this authority in 1991, when you were operating without it in the past?

ANSWER:

The $5,000 representation fund will allow the Center to provide working lunches for visiting foreign judges and executive personnel, to provide working lunches for law professors and leading practitioners who serve on FJC advisory committees, and to host modest social events associated with international legal exchanges such as the recent two-week Canadian and Anglo-American Exchanges in which the Chief Justices of each country participated.

In 1989, 88 judicial representatives (judges, lawyers and court administrators) from 31 countries visited the Center. So far in 1990, 34 persons from 14 countries have visited. Later this year, Washington will be the site of the International Appellate Judges Conference. This Conference will bring to town the chief judicial officers of every country with which the United States has diplomatic relations. We expect that almost all of them will visit the Center.

In past years Center staff members have, to avoid embarrassment, paid for functions with their personal funds, or have had their spouses prepare food at home and bring it to the Center, again at personal expense.

QUESTIONS SUBMITTED BY MR. KOLBE

FEDERAL JUDICIAL CENTER

FISCAL YEAR 1991 BUDGET REQUEST

NINTH CIRCUIT

QUESTION:

Has the Federal Judicial Center looked into the possibility of splitting the 9th Circuit Court of Appeals? If so, have you made a recommendation, or when is a report due?

ANSWER:

The Federal Judicial Center has not made any study of the possibility of splitting the 9th Circuit Court of Appeals.

QUESTION:

What is the caseload level of the 9th Circuit Court of Appeals compared to the other Circuit Courts? What is the caseload breakdown in the 9th Circuit Court of Appeals by State?

ANSWER:

The Ninth Circuit Court of Appeals has far more cases filed, terminated, and awaiting action than any other federal court of appeals. In statistical year 1989, 5,962 appeals were terminated by the Ninth Circuit Court of Appeals. The Fifth Circuit Court of Appeals ranked second with 4,438 appeals terminated that same year.

The following table indicates the number of appeals filed, terminated, and awaiting action in each of the courts of appeals. While the number of appeals in the Ninth Circuit is large, its large number of judgeships permits a workload for each judge that is well within the range of the other courts of appeals; in fact, the Ninth Circuit Court of Appeals ranks ninth among the courts of appeals in the number of terminations per judgeship.

CASES FILED, TERMINATED AND PENDING IN THE COURTS OF APPEALS FOR STATISTICAL YEAR 1989

CIRCUIT	FILED	TERMINATED	PENDING
DC	1771	1718	2174
FIRST	1287	1307	759
SECOND	3172	2988	1004
THIRD	3088	2956	1388
FOURTH	3287	2974	2270
FIFTH	4759	4438	2909
SIXTH	4195	4194	2920
SEVENTH	2703	2211	2274
EIGHTH	2677	2590	1605
NINTH	6305	5962	6933
TENTH	2144	2090	2404
ELEVENTH	4346	3944	3366

Using cases terminated in statistical year 1988, the breakdown is as follows:

Total Terminations	5642		100%	
Alaska	108		2%	
Arizona	497		9%	
California - Total	3047		54%	
Northern District		909		16%
Eastern District		302		5%
Central District		1521		27%
Southern District		315		6%
Hawaii	217		4%	
Idaho	105		2%	
Montana	136		2%	
Nevada	308		5%	
Oregon	395		7%	
Washington - Total	548		10%	
Eastern		131		2%
Western		417		7%
Guam	39		1%	
Northern Mariana Island	16		0%	
Other (e.g., mandamus)	226		4%	

QUESTION:

Could you make suggestions on possible ways to split the 9th Circuit Court of Appeals to more equitably distribute the caseload?

ANSWER:

The Center has not made any study of possible ways to split the 9th Circuit Court of Appeals. It has not been requested by the Judicial Conference to do so. In any event, whether the Center should undertake such a study would be a policy matter to be addressed by the Board of the Center.

Tuesday, February 27, 1990.

UNITED STATES SENTENCING COMMISSION

WITNESSES

JUDGE WILLIAM W. WILKINS, JR., CHAIRMAN
PHYLLIS J. NEWTON, STAFF DIRECTOR
JOHN R. STEER, GENERAL COUNSEL

Mr. Smith. Our next witness is Judge William W. Wilkins, Chairman of the United States Sentencing Commission, who will justify the fiscal year 1991 budget request of the Sentencing Commission. The request is for $9,300,000, which represents an increase of $2,405,000 above the appropriated level of $6,445,000 for fiscal year 1990. At this point, we will insert the Commission's justification material in the record.

[The justifications follow:]

UNITED STATES SENTENCING COMMISSION

For an additional amount for 'United States Sentencing Commission,' $700,000, to remain available until expended.

Presently available	$6,895,000
Proposed supplemental	700,000
Revised estimate	$7,595,000

Program and Financing

	1990 Presently Available	1990 Revised Estimate	1990 Proposed Supplemental
Program by activity:			
Salaries and expenses	$6,895,000	$7,595,000	$700,000
Financing:			
Unobligated balance, start of year	- 450,000	- 450,000	.....
Budget Authority	$6,445,000	$7,145,000	$700,000
Relation of obligations to outlays:			
Obligation incurred, net	6,895,000	7,595,000	700,000
Obligated balance, start of year	469,000	469,000	.....
Obligated balance, end of year	-546,000	- 669,000	-123,000
Outlays	$6,818,000	$7,395,000	$577,000

Analysis by Object Class
(Dollar amounts in thousands)

	1990 Presently Available	1990 Revised Estimate	1990 Proposed Supplemental
11 Personnel compensation	$3,492	$3,920	$ 428
12 Personnel benefits	666	709	43
21 Travel and transportation of persons	520	540	20
22 Transportation of things	26	30	4
23 Rental payments to others Communications, utilities, and misc.	764	843	79
24 Printing and reproduction	148	188	40
25 Other services	130	140	10
26 Supplies and materials	879	882	3
31 Equipment	102	122	20
	168	221	53
Total obligations	$6,895	$7,595	$ 700

Personnel Summary

Total number of full-time permanent positions	83	100	+17
Total compensable workyears: Full-time equivalent employment	83	100	+17

Justification

The United States Sentencing Commission's fiscal year 1990 supplemental request is for $700,000. A supplemental is required to deal with the burgeoning caseload for the sentence monitoring system and court decisions on sentencing practice, as well as to continue the sentencing data collection effort formerly performed by the Administrative Office of the U.S. Courts through the Federal Probation Sentencing and Supervision Information System (FPSSIS). These funds will permit the Commission to fully develop and maintain the data-gathering, compilation and dissemination tasks of the Commission's sentence monitoring system. The Commission will use $471,000 of the supplemental funds for salaries and benefits of a total of 17 workyears. The majority of the workyears will be used to hire permanent and temporary data technicians and other personnel needed to clear the backlog of cases that have reached the Commission, to keep up to date with the significant number of incoming cases, and to expand the database to collect certain other essential information. This expansion of the database will add approximately 1 hour to the data collection effort on each of the 10,000 cases sampled and an additional 16 minutes on the remaining 30,0000 cases sentenced annually under the Commission's guidelines. In conjunction with the data collection and compilation functions, there is a strong demand from the members of the criminal justice system for analytical research related to present sentencing procedures.

In addition, the Commission will add staff in the General Counsel's office. These new legal staff will review and analyze the high volume of District and Appeals Court decisions in cases related to sentencing. The legal staff will be involved in examining the court documentation related to application of and departures from the guidelines to determine whether legal problems exist with the application of the guidelines.

The remainder of the supplemental request, $229,000 will be used to rent office space to house these staff and to provide furniture, equipment, supplies, and other services to support them. The Commission believes this supplemental request is essential to the critical work of refining our data collection and compilation system, bringing the data base up to date, and being effective in meeting the needs of the Congress, the Commission, and the criminal justice community for information on sentencing practices and guideline application.

UNITED STATES SENTENCING COMMISSION

Summary of Requirements

Appropriation 1990 (enacted to date)	$6,520,000
Sequestered pursuant to P.L. 99-177	- 75,000
Proposed Supplemental	+ 700,000
Budget Authority, 1990	7,145,000
1991 budget estimate	9,300,000
Proposed Increase	1,705,000

Appropriation Language

UNITED STATES SENTENCING COMMISSION

SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, [$6,520,000] $ 9,300,000

UNITED STATES SENTENCING COMMISSION
FISCAL YEAR 1991
(Dollar amounts in thousands)

		1991 Request	
	Summary of changes:	Perm. Pos.	Amount
	Appropriation 1990 (enacted to date)	83	$ 6,520
	Sequestered pursuant to P.L. 99-177	...	- 75
	Proposed supplemental	+17	700
	Obligational authority, prior years	...	450
	Total Obligational Authority, 1990	100	7,595
Page No.	**Adjustments to base and built-in changes:**		
12.11	1. Restoration of amount sequestered to appropriation base resulting from the Balanced Budget and Emergency Deficit Control Act of 1989	...	+ 75
12.11	2. Cost of within-grade salary advancements	...	+ 75
12.11	3. 1991 pay cost increase for Commissioners and Senior Executive personnel	...	+ 337
12.11	4. 1991 pay cost increase for General Schedule personnel	...	+ 100
12.11	5. Increase in space rental rates	...	+ 137
12.11	6. Other increases in travel, charges for services, printing, supplies and equipment	...	+ 228
	Subtotal	...	+ 952
	Resources for workload increases and improvements in services:		
12.11	7. Additional personnel	+20	+ 753
	Subtotal	+20	+ 753
	Total increases requested	+20	+ 1,705
	Total appropriation requested, 1991	120	$ 9,300

UNITED STATES SENTENCING COMMISSION

Obligations by Activity
(Dollar amounts in thousands)

Authorization: Permanent	1990[*] Appropriation		1990 Adjusted (Base for 1991)		1991 Request		Increase 1991 over 1990 as Adjusted	
Comparison by activities:	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount	Perm. Pos.	Amount
Salaries & Expenses	100	$7,595	100	$8,547	120	$9,300	+20	$+ 753
Unobligated balance available, start of year . .	...	- 450	...	...	...	.....	...	.....
Unobligated balance available, end of year . . .	...	.....	...	.....	...	.....	...	.....
Budget Authority	100	$7,145	100	8,547	120	$9,300	+20	$+ 753

Object Classification
(In thousands of dollars)

		1990 Estimate	1991 Estimate	Difference (+) or (-)
11	Personnel Compensation	$3,920	$5,064	$+1,144
12	Personnel Benefits	709	905	+ 196
21	Travel and transportation of persons	540	650	+ 110
22	Transportation of things	30	30	...
23	Rental payments to others	843	980	+ 137
	Communications, utilities and other rent	188	211	+ 23
24	Printing and reproduction	140	150	+ 10
25	Other services	882	915	+ 33
26	Supplies and materials	122	145	+ 23
31	Equipment	221	250	+ 29
	Total Obligations	$7,595	$9,300	$+1,705

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[*] Includes a proposed program supplemental of $700,000.

Relation of Obligations to Outlays

(In thousands of dollars)

	1990 Total	1991 Estimate	Difference (+) or (-)
Obligations incurred, net	$7,595	$9,300	$+1,705
Obligated balance, start of year	469	669	+ 200
Obligated balance, end of year	- 669	- 733	- 64
Outlays	$7,395	$9,236	$+1,841

Personnel Summary

	1990 Estimate	1991 Estimate	Difference (+) or (-)
Total number of full-time permanent positions	100	120	+20
Total compensable workyears:			
Full-time equivalent employment	100	120	+20

GENERAL STATEMENT

This appropriation is for the salaries and operating expenses of the United States Sentencing Commission, an independent agency within the Judicial Branch, authorized by the Congress in Chapter II of the Comprehensive Crime Control Act of 1984, Public Law 98-473. The purposes of the Commission are to establish sentencing guidelines, policies, and practices that provide for certainty and fairness and reflect advancement in the knowledge of human behavior for the federal criminal justice system. The Commission is also charged with conducting research related to sentencing and developing means of measuring and evaluating the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing set forth in section 3553(a)(2) of Title 18, United States Code.

The Commission began operation in October 1985. The first phase of its work was the development of an initial set of guidelines and policy statements for the sentencing of individual offenders convicted of federal crimes. As required by statute, the initial guidelines were submitted to Congress in April 1987, and, after the requisite period of Congressional review, became effective November 1, 1987, for offenses occurring on or after that date. Subsequently, the Commission has issued a series of amendments to the guidelines, the most recent of which became effective November 1, 1989. These amendments clarify previous guidelines and include new or revised guidelines, some of which were necessitated by the Omnibus Anti-Drug Abuse Act of 1988 and other enactments of the 100th Congress affecting criminal penalties.

Shortly after implementation of the guidelines, defendants throughout the country began challenging the constitutionality of the Sentencing Reform Act, claiming violations of the separation of powers and delegation doctrines. On January 18, 1989, the U.S. Supreme Court ruled in *U.S. v. Mistretta*, 109 S.Ct. 647, upholding the constitutionality of the guidelines and of the Commission as an independent judicial branch agency. Prior to the Supreme Court's ruling, three courts of appeals and more than 300 district courts had addressed the issue. Due to the constitutional litigation, implementation of guideline sentencing varied widely. Post-*Mistretta*, however, the guidelines and related provisions of the Sentencing Reform Act began receiving essentially nationwide application.

Major Commission Tasks and Continuing Responsibilities

As specified in the enabling legislation (see 28 U.S.C. §§991-998), Congress enumerated a lengthy list of responsibilities for the Commission beyond the promulgation of an initial set of sentencing guidelines. Among the major, ongoing Commission responsibilities are the following:

- monitoring the operation of the initial guidelines;
- promulgating necessary revisions and additions to the guidelines;
- assessing the effectiveness of the guidelines in achieving the sentencing purposes of just punishment, deterrence, incapacitation, and rehabilitation;
- conducting theoretical, applied, and past practice research related to sentencing; and,
- serving as a clearinghouse for the collection and dissemination of information on Federal sentencing practices.

The Commission has developed detailed plans and programs to accomplish these and other related tasks. These plans involve cooperation with the Administrative Office of the United States Courts, the Federal Judicial Center, the Department of Justice, and other agencies as appropriate.

Guideline Promulgation and Amendment. Congress anticipated that the task of developing a comprehensive system of sentencing guidelines for the federal courts would be an iterative process evolving over a period of years. (This is one reason why the Commission was created as a permanent agency with full-time Commissioners during the six years following the effective date of the initial guidelines.) While the initial guidelines for individual offenders have been in place for two years, the Commission is devoting substantial effort to the task of promulgating new or amended guidelines, policy statements, and commentary, as a result of new legislation, field experience in

Judge WILKINS. Mr. Chairman and members of the committee, let me introduce two commissioners who are with us today. I don't think they have previously appeared before you. This is Judge George MacKinnon of the District of Columbia Circuit Court of Appeals, and this is Commissioner Helen Corrothers.

I know you have my testimony, and I just have a few brief remarks that I will make.

Just about one year ago today, the United States Supreme Court upheld the constitutionality of the Sentencing Commission and the guidelines which we promulgated. Since that time, we have had about one year of nationwide implementation of this new guidelines system.

From my viewpoint and the analysis that we have made, three important and significant changes have occurred. First of all, we now have a system in Federal courts that is a more honest system. With the abolition of the old parole system, truth in sentencing now is a reality. The sentence imposed in the courtroom by the judge, in the public courtroom, is the sentence served, be it probation or a term of incarceration. We have a fairer system, Mr. Chairman, because similar defendants who have similar characteristics and commit similar crimes, will under the guidelines, at least in the large majority of cases, receive a similar sentence. Now, because of guidelines sentencing, certainty of punishment is a reality, and this brings about a significantly greater deterrent, in my judgment, to future criminal conduct.

Now, since the guidelines went into effect, there have been approximately 21,000 defendants sentenced under the guidelines. Eighty-two percent of these defendants were sentenced within the appropriate guideline range. In three percent of the cases, the judge departed above the guidelines; in 9 percent of the cases, the judge departed below the guidelines, giving justifiable reasons pursuant to statute. The remaining six percent of the defendants were substantial assistance defendants who are classified by statute as a special category and moved outside the operation of the guidelines because of the cooperation and information and assistance given to the Government in the prosecution of other people. So there is a very, very high compliance rate in the courts around the country.

We heard a lot of people claim that because of the new guidelines, the system was going to break down because defendants would opt for trial and not plead guilty. In the past, 89 percent of defendants pled guilty under the old system for various reasons, the primary being to receive the most consideration from the court at sentencing. Under the guidelines, 89 percent of the defendants plead guilty today. So those statistics have remained essentially constant, and I am confident they will remain that way because of the way the guidelines system is designed.

The Sentencing Reform Act requires the Commission to receive from every court in the country a variety of information and documents, and we are required to monitor and evaluate every sentence imposed in every Federal court, except for petty offenses and infractions. What we receive from the courts is a copy of the pre-sentence report; we receive a copy of the judgment and commitment order; and we receive a copy of the plea agreement, if there was a plea agreement in a particular case; and then we receive in one form or another a statement of reasons or a transcript of the sentencing hearing conducted at the time of sentencing.

From that, by statute, we are to extract a great variety of data. Indeed, with the termination of FPSSIS in the next few months by the AO's office, we will be the only agency charged with and collecting information on sentencing in our Federal courts. We take this information and from it we extract not just the judge and the district it came from and not just the personal characteristics of the defendant, like age and sex and socioeconomic status and country of origin, and things like that, but we look at the application of the guidelines against the real offense conduct of the particular case, and then compare that with the statute that the defendant has ultimately pled guilty to or been convicted of. And this is extremely important to see whether or not the guidelines are being applied in an appropriate manner.

We look at plea agreements and whether or not the plea agreement compared with the real-offense conduct extracted from these documents is being used to circumvent the guidelines. Indeed, that is happening in a minority of cases, but nevertheless we see in these early stages of implementation some circumvention of the guidelines and the Sentencing Reform Act by plea negotiations. We are identifying these problems and working with the Attorney General and Department of Justice. We are going to, I hope, be able to reduce that even to a very, very small percentage.

In any event, all this data is collected, and we identify problems and operation of the guidelines through the monitoring data and other sources, and provide information to those who request it. This is where a large emphasis in our work now is.

Now, it takes a lot of time to do this. I have Phyllis Newton here as our staff director, and this is John Steer, our general counsel. I forgot to introduce these folks. Anyway, I asked them to look and just see what is happening on the ninth floor of our offices where we do all this work. First of all, we've got about a 5,000-case backlog now. They are stacked up there, and we get to them one at a time. Last week, we received 1,200 cases. That's not just the name of the case. That is 1,200 packets that include the various documents that I mentioned. That was a heavy week for us, but usually we get between 700 and 750 packets of material. It takes someone about 90 minutes on average to go through this and extract the necessary data that we put into our computer base.

If we use the figure 40,000 cases, which is conservative—we will have at least that many by the end of this year, and next year there will be more than that—that totals up to about 60,000 hours or 28.8 work years. And if you round that off, that is about 29 people it takes to perform this function. We have 12 people doing it now, and that includes two supervisors who, in addition to their responsibilities as managers, also work the computer just because we have to do that. And so we have asked in our supplemental appropriation, because of that, for 17 people. Actually, 13 people in the supplemental appropriation if we can get that and hire these people and continue that on into our next year's budget so we can hire an additional 4 people and know there is going to be money to pay them and keep them. Then that would be 17 people. We have also asked for two additional work years in the evaluation section guideline application, and changes in legal interpretation. The Commission expects that experience will indicate some continuing need for revision in previously issued sentencing guidelines in order to more effectively carry out the sentencing policies established by Congress and the Commission. In addition, the Commission is working actively to issue guidelines for the sentencing of corporate defendants and offenders for whom probation or supervised release must be revoked. Draft guidelines for corporate offenders were issued for public comment in November 1989. The Commission expects to present its new guidelines in this important area, as well as new guidelines for revocation of probation and supervised release, for Congressional review in May 1990.

Legislative Activities. As part of its statutory authority, the Commission is directed to make recommendations to Congress concerning "modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy." 28 U.S.C. §995(a)(20). Under this authority, the Commission has recommended statutory amendments to the Congress. Currently, the Commission is in the process of responding to the instruction in §994(r) of Title 28 to "recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate." These recommendations, aimed at achieving more uniform punishments for similar offense conduct, will be presented to the Congress in the coming year. In addition, Commissioners and staff members are called upon by Members of Congress and staff to provide expert advice with respect to legislation on a wide variety of criminal justice matters.

Sentence Monitoring. Using information provided by the courts pursuant to section 994(w) in connection with each sentence imposed, and other relevant information collected by its research staff, the Commission is directed to monitor the operation of the sentencing guidelines. Section 995 of its enabling statute further directs the Commission to analyze and disseminate sentencing information and to report periodically to Congress necessary changes in sentencing law and the sentencing guidelines. In order to carry out these and related responsibilities, the Commission has designed and implemented a monitoring program that involves a large data collection and compilation effort, some of which was previously performed by the Administrative Office of the United States Courts and court personnel nationwide. These continuing tasks will necessitate a major commitment of Commission staff and other resources during fiscal year 1991 and subsequent years.

The monitoring function is a sizeable undertaking. For each of the approximate 45,000 criminal cases disposed of annually, the courts forward and Commission staff reviews and collects data from the presentence report, the court's statement of reasons, any written plea agreement, and judgment of conviction order. The type and length of sentence ordered, guideline factors, defendant background, and departure status are among the many elements collected on each case. These data will serve as the basis for the required annual report to Congress on the application of the guidelines, will be made available for research and analysis purposes, and will be used by the Commission in reviewing the guidelines and identifying the effects of changes in practice. Data from the monitoring system will be used as the basis for addressing specific areas such as prosecutorial discretion and plea negotiation, disparity, severity, and use of incarceration in the four-year evaluation required by Congress. During 1990, the Commission's dataset will become the only comprehensive source for federal sentencing information.

The computerized data collection system was originally designed to use identifiers to match with certain variables of the sentencing data collected through the Administrative Office of the U. S. Courts' Federal Probation Sentencing and Supervision Information System (FPSSIS). Some portion of the time of 3,500 Administrative Office and court personnel nationwide has been devoted to collecting, compiling, and analyzing the sentencing portion of the FPSSIS database. Beginning in March 1990, FPSSIS will no longer collect sentencing data; as a result, the Commission's monitoring system must begin to collect this essential information from source documents. Processing, coding, and entering into the computer the basic information on each case takes a minimum of 26 minutes. Coding additional data on certain more complicated components of guideline application, offense behavior, plea agreements, and departure takes 1 hour and 5 minutes per case.

At present, the Commission's resources do not allow the Commission to meet its Congressional mandate and collect 100 percent of the information on each case disposed of under the sentencing guidelines. The Commission has requested a supplemental appropriation to accommodate this statutorily-directed data collection effort for purposes of research on the initial operation of the guidelines, the annual report to Congress, and the statutorily-mandated 4-year evaluation. This will require a significant increase in staff resources and funds during fiscal year 1990 and beyond.

The workyears devoted to collection and compilation of monitoring data will increase by 17 workyears from the current staffing pattern to the fiscal year 1991 request. The largest portion of the increase (13 workyears) will take place in the second half of 1990, if the Congress approves the Commission's supplemental appropriation request. The additional 4 workyears in fiscal year 1991 will cover new monitoring duties associated with the anticipated issuance of guidelines on organizational sanctions and higher workload related to an increase in the number of federal cases sentenced. Staffing for this function consists largely of data technicians, team leaders, research assistants, data base experts, supervisory personnel, file clerks, and administrative support.

The Commission also has a Congressional directive to monitor the sentencing recommendations of probation officers and has established a case review project to meet this mandate. On a random basis, the presentence reports, plea agreements, statements of reasons, and guideline worksheets are reviewed to assess whether the guidelines are being applied by probation officers as the Commission intended and to identify common guideline application problems. Reports from this project have proven helpful to regional administrators of the Administrative Office of the U.S. Courts in their on-site reviews of field offices because these reports provide an overview of the guideline application practices of the various offices, identifying their strengths and problem areas. In addition, Commission staff find the results of the case review project of great assistance in the on-going amendment process and the development of technical assistance and training materials.

Evaluation. In addition to the activities directly related to the collection and analysis of sentence imposition data, Section 236(a) of the Sentencing Reform Act of 1984 requires a four-year evaluation report on the impact of sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration.

The Commission has used interviews with experts in statistics, sociology, criminal law, methodology, and other areas to gather advice on the research issues to be addressed. The Commission formed a Research Advisory Group, composed of nationally recognized experts in sentencing, to advise the evaluation staff on the complex conceptual and methodological issues inherent in a study of this size, as well as to review its plans for data collection under the monitoring program.

The evaluation plan combines qualitative and quantitative evaluation methods, involving process evaluations that examine the operation of the guidelines in a designated number of districts, primarily through qualitative research methods using replicable, standardized models. This field research approach will accomplish the following objectives:

- Identify problems that may be affecting the reliability and/or validity of the large aggregated databases;
- Inform the Commission of the day-to-day operations and problems that diverse districts may experience when applying the guidelines;
- Identify similarities and differences among the districts that could be extrapolated to all districts;
- Identify areas the Commission may want to explore in more depth through a nationwide survey;

- Reveal new data sources, nonreactive indicators and appropriate impact/outcome indicators;

- Prescribe and guide new or modified data collection forms; and

- Provide an operational model for future evaluations.

In addition to the process evaluations, the evaluation will assess the impact of the guidelines on prosecutorial discretion, plea bargaining, disparity in sentencing, and the use of incarceration. In this effort, the Commission will use its monitoring data, as well as FPSSIS and Criminal Masterfile data from the Administrative Office of the U.S. Courts, Bureau of Prisons' data, Executive Office of the U.S. Attorneys' data, U.S. Parole Commission data, and other relevant databases. Preliminary field surveys, a vignette study, a pilot study, and preliminary analyses of early data are currently underway.

The results of the evaluation are due to the General Accounting Office by November 1991, one month before the GAO begins its six-month study of the Sentencing Commission and the guidelines. The GAO report is to be presented to the Congress in May 1992.

Accomplishing the full evaluation plan will require additional resources in both fiscal years 1990 and 1991. An addition of two workyears is being requested in the 1990 supplemental in order to code, enter, and analyze data that will not be a part of the regular monitoring data base but that is considered essential to the evaluation effort. The fiscal year 1991 request includes a continuation of the workyears proposed in the supplemental, as well as an increase of 4 workyears. These increases are necessary to ensure that the information collected in the process evaluations during 1990 is properly compiled, analyzed, and considered in the context of the comprehensive evaluation plan. Additional staff will be used to continue to collect data not available through the monitoring effort for "before and after" comparisons.

Other Research Responsibilities. In addition to the activities directly related to the collection and analysis of sentence imposition data, the Commission's enabling statute outlines a variety of research tasks. One such continuing activity is the annual update of prison impact of the guidelines. Pursuant to 28 U.S.C. §994(g) and (q), the Commission, in cooperation with the Bureau of Prisons, has developed an assimilation model to assess the impact of the sentencing guidelines and other provisions of federal criminal law on federal prison populations. The Commission is authorized, under Section 994(g), to make recommendations concerning any changes in prison facilities and services necessitated by the implementation of the sentencing guidelines. Additionally, section 994(q) requires the Commission and the Bureau to prepare a report for Congress "concerning maximum utilization of resources to deal effectively with the federal prison population." Each time the guidelines are amended or new guidelines added, the staff assesses the impact of the projections on prison population and facilities.

The Commission has conducted some initial exploration of alternative sanctions. Further work in this area is intended to ascertain the likelihood that various alternatives to incarceration can meet the purposes of sentencing in a less restrictive environment than traditional incarceration. In-depth analyses will consider issues related to alternatives to incarceration. A detailed report and recommendations are expected in FY 1991.

Although the Commission will also perform some theoretical research, its efforts will be largely directed to applied research and analysis, testing empirically the validity of sentencing theories and the extent to which sentencing policies are being implemented by the courts. The Commission will use its confidential sentencing data from the monitoring system and from other relevant sources to perform such empirical research, as well as to identify patterns and trends in past and current sentencing practice. The Commission projects requirements for research and analysis commensurate with an increase of 6 workyears and will expand its staff of economists, sociologists, computer programmers, research assistants, and clerical support. This addition will allow the Commission to be far more responsive to requests from the Congress, the court community, and criminal justice personnel for analyses and special projects related to the information on sentencing which we are collecting.

Guidelines Training and Technical Assistance. The Commission is also directed to "devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process" (28 U.S.C. §995(a)(18)).

Before implementation of the initial set of guidelines, the Commission, in conjunction with the Federal Judicial Center conducted "Train-the-Trainer" Seminars designed to familiarize judges and probation officers with the guidelines and their application. The Commission also funded in-district training programs nationwide at that time.

After a year of constitutional uncertainty, it was clear that varied levels of guideline application skills existed across the country. As a result, the Commission presented advanced regional "Train-the-Trainer" seminars in five locations. These were attended by probation officers, Assistant U.S. Attorneys, and federal or private defenders from each district, as well as district court judges. Comprehensive written training materials were developed to assist in the presentation of in-district training. These materials included course outlines, graphic aids, case examples, exercises, and test questions designed to strengthen guideline knowledge in particular areas. Commission staff will continue to update training materials as new or amended guidelines are issued. In addition to providing the nationwide "Train-the-Trainer" program, the Commission's training staff responded to over 100 requests from various agencies and organizations for speakers at in-district sessions. Individual Commissioners and staff regularly are called upon to lecture on the guidelines at training sessions, academic seminars, and professional meetings.

There will be a continuing need for periodic training updates for those new to the federal criminal justice system and to assist others in staying abreast of changes in the guidelines and related developments. As with the initial guidelines training, the Commission expects to cooperate with the Federal Judicial Center, Administrative Office of the U.S. Courts, Department of Justice, and with private bar organizations in future education programs for court personnel, U.S. Attorney staff, and public and private defenders.

During fiscal year 1991, the Commission expects to meet heavy demands for training on the newly-developed guidelines for corporate defendants and revocation of probation or supervised release, premised on the expectation that these new guidelines should go into effect in November 1990. The staff will develop training materials and provide on-site instruction on these new guidelines as appropriate.

The Commission also expects to continue the Technical Assistance Service "Hotline" it established to assist judges and probation officers in understanding and implementing sentencing guidelines. During 1988, hotline calls averaged about 150 per month. After the Supreme Court's decision in Mistretta, the volume of calls rose significantly and averaged about 210 questions per month in FY 1989. Information regarding calls to the hotline are used to identify areas in the guidelines that need further attention in the form of training or assistance materials (such as, the Commission's publication of "Questions Most Frequently Asked About the Sentencing Guidelines"), clarifications in guidelines or commentary, and development of new or amended guidelines.

In conjunction with implementation of the guidelines, the Commission's staff developed ASSYST, a computer software program designed to help judges, probation officers, and attorneys apply the guidelines. ASSYST is an automated version of the Commission's guideline worksheets used in preparing presentence investigation reports for the sentencing court. By completing all relevant sections of the worksheets, a probation officer calculates an individual's guideline sentencing range, fine range, and supervision requirements.

ASSYST also makes available a dictionary of terms and entire sections of the Guidelines Manual text, commentary, and illustrative examples. ASSYST has been distributed to all U.S. probation offices, a number of interested judges, every U.S. Attorney's Office, and all federal defender offices. Commission staff update the computer software as new guidelines are added or amendments made and will continue to do so in future years. Efforts are currently underway to explore possible use of ASSYST as a data collection tool.

Legal Assistance. While the Department of Justice is responsible for representing the interests of the United States in litigation involving the sentencing guidelines, the Commission, as an independent entity within the judicial branch and as the author of the guidelines, has a strong interest in such litigation. Soon after the guidelines were issued, the Commission found it necessary to take an active role as *amicus curiae* in cases challenging the constitutionality of the guidelines in order to ensure that the Sentencing Reform Act and the guidelines were fully defended against legal attack.

Although the *Mistretta* decision settled the principal debates regarding the Commission's constitutionality, the decision did not end all constitutional litigation regarding the guidelines or resolve other issues regarding the Commission's implementation of the Sentencing Reform Act. The primary constitutional challenges remaining post-*Mistretta* have been various contentions that the guidelines violate due process by constraining the courts' discretion to individualize sentencing or otherwise restricting the courts' consideration of certain factors. These contentions have been rejected by ten circuit courts of appeals that have ruled on such issues to date. Similarly, various filings by defendants contending the Commission has not complied with statutory provisions have generally been rejected. While the Commission does not expect to be an active participant in future litigation, Commission legal staff will continue to actively coordinate with Department of Justice personnel to see that the guidelines and their underlying principles are defended. Furthermore, the legal staff must stay abreast of sentencing case law decisions in order to inform the Commission of areas for possible revision to the guidelines that may be indicated by the judicial resolution of guideline issues and sentence appeals.

In order to accomplish this, legal staff must review and periodically analyze all Court of Appeals and District Court opinions concerning application of the Commission's guidelines and policy statements. These were rendered at a rapidly increasing rate during calendar 1989. Legal staff must also review, from time to time, the statements of reasons given at sentencing for the purpose of ascertaining whether there are previously unidentified legal problems with the operation of the guidelines. Application of the sentencing guidelines also necessitates that Commission legal staff routinely advise the Commission, and those who contact the Commission for assistance in guidelines application, concerning legal issues relating to use of the guidelines. In this regard, the Commission's General Counsel and other members of the legal staff regularly act as consultants to the Technical Assistance Service staff fielding hotline calls. The Commission's legal staff also have become increasingly involved in the guideline drafting and amendment process. As the Commission looks more and more to court application of the guidelines to inform the amendment process, the role of the legal staff in this process can be expected to further expand.

The Commission is requesting a small increase of 2 workyears in the FY 1990 supplemental for legal staff. In FY 1991, an additional 2.5 workyears is requested, for a total increase of 4.5 workyears from current staffing, to continue to keep pace with the ongoing review of court decisions concerning guideline application and departures from the guidelines, as well as to support the guideline drafting and revision process.

Justification of Changes

The Commission is requesting $9,300,000 for fiscal year 1991 to provide for its salaries, benefits, and operating expenses. This is an increase of $2,855,000 over the currently appropriated amount for fiscal year 1990 of $6,445,000 (after sequester pursuant to P.L. 99-177). The Commission is, however, requesting a supplemental of $700,000 for FY 1990 and will use the bulk of its carryover no-year funds ($450,000) to fund urgent workload requirements. Thus, if Congress approves the supplemental request and no-year funds are exhausted, the Commission would have an adjusted base funding level of $7,595,000 in FY 1990. This adjusted level for 1990 would support a total of 100 workyears, up 17 from the currently authorized 83.

The FY 1991 request of $9,300,000 will be used to support an increase of 20 additional workyears, for a total of 120. These increases, as well as those proposed in the FY 1990 supplemental, are almost entirely related to establishing and maintaining a comprehensive sentence monitoring system, disseminating sentencing information, reviewing developing case law and sentencing practice, performing the statutorily-required 4-year evaluation, and providing a comprehensive basic and applied research program. A few additional positions (3.5 workyears) will provide necessary administrative and operational support for the Commission as a whole. The Commission's need for these new positions is generally outlined above in the description of continuing statutory responsibilities. Detailed cost increase information follows.

Item 1. Restoration of amount sequestered from 1990 appropriation ($75,000)

In accordance with Public Law 99-177, the Commission's fiscal year 1990 appropriation base was reduced by a sequester of $75,000. The Commission is seeking restoration of the sequestered amount of $75,000.

Item 2. Cost of within-grade salary advancements ($75,000)

The sum of $75,000 has been estimated for salary advancements and related benefits during fiscal year 1991 for U.S. Sentencing Commission personnel.

Item 3. 1991 pay cost increases for Commissioners and Senior Executive personnel ($337,000)

The sum of $337,000 is requested to cover the cost of the salary increases and related benefits increases in accordance with Public Law 101-194, effective the first pay period after January 1, 1991, for Commissioners (who are paid equivalent to Court of Appeals Judges) and a small number of staff paid at rates equivalent to Senior Executive Service levels.

Item 4. 1991 pay cost increases for General Schedule personnel ($100,000)

This item includes the fiscal year 1991 pay cost increase of 3.5% anticipated for all General Schedule personnel. The sum of $100,000 includes the pay and related benefits increases for the period beginning the first pay period after January 1, 1991.

Item 5. Increase in space rental rates ($137,000)

The sum of $137,000 includes the fiscal year 1991 commercial space rental rate increase based on inflation, real estate tax increases, and the full-year cost of additional space acquired mid-way through fiscal year 1990.

Item 6. Other increases in travel, charges for services, printing, supplies and equipment ($228,000)

This item contains projected increases in expenditures for travel, charges for services, printing, supplies, furniture, and equipment due to inflation.

Item 7. Additional personnel ($753,000)

The increased staffing needs in fiscal year 1991 primarily relate to the Commission's responsibilities to: establish and maintain a comprehensive sentence monitoring system, widely disseminate sentencing information, review developing case law and sentencing practice, perform the statutorily-required 4-year evaluation, and provide a comprehensive basic and applied research program. A small number of staff is also required to provide administrative and operational support for the Commission.

that complements the monitoring section, and two paralegals in the legal division.

So that is the bulk of our $700,000 supplemental appropriation request, Mr. Chairman, and we take the same approach that we followed with the appropriation request for next year.

[The statement of Judge Wilkins follows:]

TESTIMONY OF WILLIAM W. WILKINS, JR., CHAIRMAN
UNITED STATES SENTENCING COMMISSION
HOUSE SUBCOMMITTEE ON APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY AND RELATED AGENCIES

February 27, 1990

Introduction

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before you on behalf of the United States Sentencing Commission. I have with me today the Staff Director for the Commission, Phyllis J. Newton, and the Commission's General Counsel, John R. Steer.

Sentencing Under the Guidelines

When I testified before this Committee last year, it was just a month after the Supreme Court had decisively affirmed the constitutionality of the Commission, the sentencing guidelines, and the Sentencing Reform Act. Now, we have had a year of full implementation of the sentencing guidelines for individual defendants. Since the Supreme Court decision, over 21,000 defendants have been sentenced under the new guidelines system.

Taking stock of full implementation of the guidelines during the past year, I believe that guideline sentencing has brought about three positive changes in the federal criminal justice system. First, the system is more honest--with the abolition of parole, there is truth in sentencing for the first time in the federal courts. Second, the system is fairer--similar defendants who commit similar crimes are sentenced in a similar manner. And third, the system is more effective--the certainty by which punishment is imposed under the guidelines provides an increased deterrent to future criminal conduct.

Analysis of a 25 percent random sample of the guidelines cases for which the Commission has received documentation showed that 82 percent of the sentences imposed were within the guidelines range. This is an excellent compliance rate and greater than anticipated for the early days of guideline implementation. In those cases where judges departed from the guidelines, almost 6 percent were lower than the guideline range due to a motion by the Government for a reduced sentence based on substantial assistance to authorities in the prosecution of other offenders. In 3 percent of the cases, the court gave a sentence above the guideline range. In the remaining 9 percent of the cases, the court departed downward for reasons other than substantial assistance.

One of the issues regarding implementation of the guidelines about which concerns have been expressed is the impact of the guidelines on the rate of guilty pleas versus trials. Specifically, some critics have charged that the guidelines will cause many more defendants to elect to stand trial, thereby bringing the federal criminal justice system to its knees. Last year, I reported to you our belief that this fear was unfounded, as early data showed approximately 89 percent of all defendants subject to the guidelines were convicted by plea--which represented about the same rate of pleas versus trials as before the guidelines. This year, I can strongly reinforce our earlier belief, because our sentence monitoring data, and that of the Administrative Office of the U.S. Courts, continue to show a stable plea rate. Since the Commission devoted much thought to drafting the guidelines in a manner to preserve adequate incentives for guilty pleas, this result is gratifying.

Much has also been said and written about whether plea bargaining would result in wholesale manipulation and undermining of the guidelines. Suffice it to say that there is no empirical evidence to date of any widespread circumvention of the guidelines through plea bargaining, and I am confident there is no such pattern. Nevertheless, the Commission intends to diligently monitor and evaluate the impact of plea negotiations. In fact, we have underway a major policy study of plea practices in ten judicial districts. Our existing policy statements require full disclosure and honesty in plea agreements with respect to the actual offense conduct and relevant offense characteristics. They permit courts to accept plea agreements, provided the courts comply with obligations imposed by the Federal Rules of Criminal Procedure, the Sentencing Reform Act, and the specific criteria for such determinations contained in the policy statements.

The plea negotiation study is one example of the various means the Commission is using to obtain and review information on how the sentencing guidelines are working. We are using our research results, analysis of all sentencing data available on cases, as well as the inquiries, feedback, and requests for assistance we receive from other agencies in the criminal justice system to identify areas needing further attention. We are active in pursuing opportunities where judges, probation officers, U.S. attorneys, other Department of Justice officials, and defense practitioners can give us their views and receive the Commission's reactions. The Commission is conducting extensive examinations of various subject areas, scrutinizing the available information, and developing proposed amendments to refine the existing guidelines.

Guideline Development and Amendment

We continue to develop new guidelines, as well as revise and improve the existing guidelines. Last fall, the Commission released for public comment options aimed at dealing with the difficult problems of sentencing corporate defendants. The Commission held a public hearing here in Washington two weeks ago on those proposals. In addition, this winter we drafted guidelines to cover offenders for whom probation or supervised release must be revoked. We expect to present to the Congress new guidelines in these two important areas, in addition to a number of amendments to existing guidelines, by May 1 of this year.

To a considerable extent, I expect that future guideline revisions, although fewer in number than in previous years, may require greater investments of staff resources. This is because we will be reevaluating some major policy decisions, rather than fixing relatively minor problem areas, in light of guidelines sentencing experience and new research. In other words, we will be using accumulated data from our sentence monitoring, analyses of all relevant caselaw, and related research to determine necessary modifications of basic decisions relating to guideline structure and sentence severity. This type of comprehensive review will necessarily involve substantial staff resource commitments and major investments of Commissioners' time.

Reports to Congress

In addition to focusing on guideline development and amendments, the Commission and its staff have spent considerable time and resources in conducting a statutorily-mandated (by 28 U.S.C. § 994(r)) review of maximum penalties for federal offenses. This examination is aimed at achieving more uniform punishment for similar offense conduct. Within the next few months, the results of this study will be presented to the Congress, following up on the first phase of the report, submitted last year.

In response to Section 7301 of the Omnibus Anti-Drug Abuse Act of 1988, the Commission recently presented the Congress with a report regarding fines to cover the cost of incarceration. The

Commission also provided an annual report to Congress containing extensive information on the application of the sentencing guidelines.

Guidelines Training, Technical Assistance and Support

During 1989, the Commission provided comprehensive training materials and on-site training for five regional "train-the-trainer" seminars attended by probation officers, assistant U.S. attorneys, federal or private defenders from each district, and district court judges. Comprehensive written training materials were developed to assist in the presentation of in-district training. In addition, the Commission's training staff responded to over 100 requests from various agencies and organizations for trainers or speakers at in-district sessions around the country. As directed by 28 U.S.C. § 995(a)(17) and (18), the Commission will continue to provide such assistance and will update training materials as new or amended guidelines are issued. During fiscal year 1991, we expect a heavy demand for training and instructional materials on the newly-developed guidelines for corporate defendants and revocation of probation and supervised release. The need for this training is based on the assumption that, unless Congress rejects these new guidelines when submitted later this spring, they will go into effect in November 1990.

The Commission will continue the "Hotline" it established to assist judges and probation officers in understanding and implementing sentencing guidelines. In fiscal year 1989, the

"Hotline" averaged about 210 questions per month, an increase of about 40 percent over the previous year. Information from calls to the "Hotline" is used to identify subject areas for the Commission's publication of "Questions Most Frequently Asked About the Sentencing Guidelines," needed clarifications in guidelines or commentary, development of new or amended guidelines, and the training needs of the field.

In conjunction with implementation of the guidelines, the Commission developed ASSYST, a computer software program designed to help judges, probation officers, and attorneys apply the guidelines. ASSYST is an automated version of the Commission's guideline worksheets used in preparing presentence investigation reports and calculating an individual's guideline sentencing range, fine range, and supervision requirements. Commission staff update the computer software as guidelines are added or amended. Along these same lines, the Commission is currently exploring the possibility of testing automated data transmission with a number of districts.

Sentence Monitoring

When Congress passed the Sentencing Reform Act of 1984, the clear intent was to establish an agency whose responsibility was to focus solely on sentencing in a comprehensive manner. The Commission was given a dual mission by the Congress: (1) to develop a set of mandatory sentencing guidelines for use in the federal court system; and (2) pursuant to 28 U.S.C. § 995(a)(12)-(16), to establish a long-term research program to collect data, evaluate practice, and recommend improvements in sentencing and related areas of the criminal justice system.

A key part of the ongoing research effort is monitoring the operation of the sentencing guidelines for the purposes of analyzing and disseminating sentencing information. The statute (28 U.S.C. § 994(w)) directs that sentencing courts send to the Commission a multi-document report on each case, except petty offenses, sentenced under the Sentencing Reform Act of 1984. Since the Supreme Court decision last year, the Commission has focused much of its resources on designing and implementing a monitoring program that involves a large data collection and compilation effort.

For each of the cases sentenced, Commission staff review and collect data from the presentence report, the court's statement of reasons, any written plea agreement, and judgment of conviction order. The type and length of sentence ordered, guideline factors, defendant background, and departure status are among the many elements collected on each case. These data will be used for research and analysis purposes, for identifying the effects of changes in practice for purposes of amending the guidelines, and for the required annual report to Congress. Also, they will be used as the basis for addressing specific areas for the four-year evaluation required by Congress.

Much of this necessary data collection was previously performed by the Administrative Office of the U.S. Courts, including court personnel nationwide. Within the next few months, the Administrative Office will no longer collect the sentencing data we have used as a basis for our initial monitoring program. The Commission's monitoring system must collect this essential information from source documents, a very time-consuming and staff-intensive task. It is a responsibility not originally anticipated to be this extensive by the Congress or the Commission. The Commission in no sense shirks its responsibility for collecting, analyzing, and disseminating this valuable sentencing information; we simply emphasize that the task requires greater resource commitments than previously envisioned. In this regard, it should be noted that 3,500 people in the courts across the country and at the Administrative Office were involved in collecting, compiling, and analyzing the information in that database.

The Commission's present level of funding and personnel ceiling allow us to record and analyze only a portion of the information needed on each case disposed of under the sentencing guidelines. That is largely why the Commission has requested a supplemental appropriation and continuation of the higher resource level in 1991 to accommodate this statutorily-directed data collection effort.

Both the proportion and absolute number of defendants subject to guidelines sentences is increasing rapidly. By the end of 1990, we expect about 80 percent of the anticipated 48,000 federal defendants to be sentenced under the guidelines, and during 1991 that proportion should grow to 90 percent of all federal defendants sentenced. This rapid increase will result in a greatly increased workload for the Commission's compliance monitoring effort.

On average, it takes 90 minutes to collect and enter into the computer system full data on each case filed with the Commission. During fiscal year 1991, we expect to handle court documents and data related to well over 40,000 defendants. Thus, we estimate that comprehensive data collection would require a minimum of 29 workyears for coding and data entry. At least another 7 workyears would be needed to provide computer programming, revise and refine data collection methods, followup on document submission problems, supervise and train monitoring staff, organize the data entry and file work, handle the filing of case records, create the datasets for analysis purposes, coordinate and provide necessary information to those requesting access to the case records or data files, and analyze the data. Thus, in 1991 we will need a total of 36 workyears to perform the data collection and compilation effort. Of course, the exact distribution of monitoring staff by type of position may vary from the above, depending on such factors as the total number of cases received, future determinations regarding composition of the database, and demands for this sentencing information.

In comparison to the current monitoring staffing pattern, the fiscal year 1991 request is an increase of 17 workyears. The largest portion of the increase (13 workyears, $353,000[*]) will take place in this fiscal year, provided the Congress approves the Commission's supplemental appropriation request. Under the fiscal year 1990 supplemental request, we have asked for 13 workyears to handle the 1990 caseload and to clear a backlog of cases that has developed due to insufficient staff resources and time necessary to complete the initial design and implementation phase of the automated data collection system. In fiscal year 1991, we will need to continue those 13 workyears and add 4 workyears (and $100,000*) to cover new monitoring duties associated with the anticipated issuance of guidelines on organizational sanctions and higher workload related to an increase in the number of cases sentenced under the guidelines.

Evaluation

In addition to the research activities directly related to the collection and analysis of sentence imposition data, the Commission is required by Section 236 of the Sentencing Reform Act of 1984 to provide Congress with a four-year evaluation report concerning the impact of sentencing guidelines on the statutorily-identified subjects of prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration.

During 1989, the Commission resolved a number of complex conceptual and methodological issues inherent in a study of this size, with the assistance of a group of criminal justice and methodological experts from a variety of disciplines. The evaluation plan combines qualitative and quantitative evaluation methods that include an examination of guideline operation in a number of districts, using replicable, standardized models. This field research approach will be used to identify problems that may affect the reliability or validity of quantitative analyses that use large aggregate databases, day-to-day problems that different districts may experience when applying the guidelines, similarities and differences among the districts along a variety of dimensions that may affect guideline application, issues the Commission may want to explore in more depth through a nationwide survey, new data sources and indicators, and potential changes or additions to data collection forms. This approach will provide an operational model for future evaluations.

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[*] Costs for salaries and benefits only.

The Commission will use its monitoring data, as well as several other relevant databases to assess the impact of the guidelines in the four areas required by Congress. Preliminary field surveys, a vignette study, a pilot study, and preliminary analyses of early data are currently underway.

The results of the evaluation are due to the General Accounting Office by November 1991, a month before the GAO begins its 6-month study of the Sentencing Commission and the guidelines. The GAO report is to be presented to the Congress in May 1992.

Accomplishing the full evaluation plan will require additional resources in both fiscal years 1990 and 1991. An addition of two workyears and $58,000[*] is requested in the 1990 supplemental in order to code, enter, and analyze data that will not be a part of the regular monitoring database but are essential to the evaluation effort. The fiscal year 1991 request includes a continuation of the workyears proposed in the supplemental, as well as an increase of 4 workyears and $134,000*. These increases are necessary to ensure that the information collected in the process evaluations during 1990 is properly compiled, analyzed, and considered in the context of the comprehensive evaluation plan. Some of the additional staff will be used to continue to collect data not available through the monitoring effort for "before and after" comparisons.

Additional Research Responsibilities

In addition to the activities directly related to the collection and analysis of sentence imposition data, the Commission's enabling statute outlines a variety of research tasks. One such continuing activity is the annual update of the impact of the guidelines on federal prison populations, which the Commission assesses using an assimilation model developed jointly with the Bureau of Prisons. Each time the guidelines are amended or new guidelines added, the staff assesses the impact of the projections on prison population and facilities.

The Commission has conducted some initial exploration of alternative sanctions. Further work in this area is intended to ascertain the likelihood that various alternatives to incarceration can meet the purposes of sentencing in a less restrictive environment than traditional incarceration. A report and recommendations are expected in fiscal year 1991.

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[*] Costs for salaries and benefits only.

Much of the research effort in the early years of guideline development and implementation was aimed at clearly determining past or present practice, as benchmarks for establishing guideline ranges, and in developing such basic research tools as the prison impact model. The Commission's overall research focus is now shifting from definition of past sentencing practices to exploration of the impact and effectiveness of the guidelines in advancing the purposes of sentencing established by the statute. In addition, the Commission's research will consider the extent to which guidelines sentences provide certainty and fairness, reduce unwarranted disparity, and permit sufficient flexibility for individualized sentences for defendants. In considering the purposes of sentencing, the Commission research staff is developing plans for the study of crime seriousness, deterrence, public safety, and selective incapacitation. The purpose of these research efforts is to document, through carefully designed and implemented research, the advancement in criminal justice knowledge accomplished through the Sentencing Reform Act and, more specifically, the sentencing guidelines.

The Commission projects requirements for theoretical and applied research and analysis commensurate with an increase of

6 workyears and $311,000[*] in fiscal year 1991. This addition will provide the Commission's research staff the flexibility to address its Congressionally-mandated work as well as to be far more responsive to requests from the Congress, the court community, and criminal justice personnel for analyses and special projects related to the Commission's information on sentencing.

Legal Research and Analysis

Although the Supreme Court's decision in Mistretta settled the principal debates regarding the Commission's constitutionality, the decision did not end litigation and legal issues regarding the guidelines or the Commission's implementation of the Sentencing Reform Act. The primary constitutional challenges, involving due process claims, that remained post-Mistretta have been rejected by the eleven circuit courts of appeals that have ruled on such issues to date. Similarly, various filings by defendants contending the Commission has not complied with statutory provisions have generally been rejected. While we do not expect to be an active participant in future litigation, the Commission's legal staff will continue to actively coordinate with Department of Justice personnel to see that the guidelines and their underlying principles are properly defended.

In addition, the legal staff must stay abreast of sentencing caselaw decisions in order to inform the Commission of areas for possible revision to the guidelines that may be indicated by judicial resolution of guidelines issues and sentence appeals. In order to accomplish this, legal staff review and analyze the rapidly increasing number of Court of Appeals and District Court opinions concerning application of the Commission's guidelines and policy statements. During fiscal year 1989, more than 3,700 Appeals Court decisions involving sentencing issues were rendered. While not all of these were accompanied by a full written opinion, the volume of appellate court decisions reviewed and analyzed by our staff was considerable. Staff also review statements of reasons given at sentencing to identify legal or practical problems with the operation of the guidelines. Legal staff routinely advise the Commission, and those who contact the Commission for assistance, concerning legal issues relating to application of the guidelines and evolving caselaw. Additionally, members of our legal staff regularly conduct training programs involving the guidelines and play a prominent role in the guideline drafting and amendment process.

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[*] Costs for salaries and benefits only.

The Commission is requesting a small increase of 2 workyears and $60,000* in the fiscal year 1990 supplemental for legal staff. In fiscal year 1991, an additional 2.5 workyears and $124,000* is requested. This total increase of 4.5 workyears from current staffing will support the review of court decisions concerning guideline application and departures from the guidelines, as well as the guideline drafting and revision process.

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*Costs for salaries and benefits only.

Funds Requested

The Commission is requesting $9,300,000 for fiscal year 1991 to provide for salaries, benefits, and operating expenses. The Commission is also requesting a supplemental of $700,000 for fiscal year 1990 and will use the bulk of its carryover no-year funds ($450,000) to fund urgent workload requirements during 1990. Thus, if Congress approves the supplemental request and no-year funds are exhausted, the Commission would have an adjusted base funding level of $7,595,000 in fiscal year 1990. This adjusted level for 1990 would support a total of 100 workyears, up 17 from the currently authorized 83.

The fiscal year 1991 request of $9,300,000 will be used to support a further increase of 20 workyears, for a total of 120. These increases, as well as those proposed in the fiscal year 1990 supplemental, are almost entirely related to establishing and maintaining a comprehensive, up-to-date sentence monitoring system, disseminating sentencing information, reviewing developing caselaw and sentencing practice, performing the statutorily-required evaluation, and providing a comprehensive basic and applied research program. A few additional positions (3.5 workyears and $84,000[*]) will provide necessary administrative and operational support for the Commission as a whole.

The increased staffing level will entail additional support costs of $365,000 for office space, travel, services, printing, supplies, furniture, and equipment. The fiscal year 1991 estimates also include the cost of pay raises for Commissioners whose salary is paid from the Commission account and senior executives, as provided by the Congress in the last session, as well as increases for general schedule employees. These pay raises and related increases in benefits are estimated at a total cost of $512,000.

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[*] Costs for salaries and benefits only.

Conclusion

Through the Sentencing Reform Act, the Congress established a comprehensive approach to the sentencing of federal offenders. It laid out a regimen of responsibilities that it intended the Sentencing Commission to follow, and the Commission is committed to full performance of that regimen. The first and foremost responsibility was to develop and implement the initial sentencing guidelines. The Commission takes great pride in having produced a workable and apparently effective set of guidelines and policy statements in a very short time.

In addition to this important guideline development task, the Commission is charged with other equally important, ongoing functions including:

- monitoring the operation of the guidelines;
- assessing their effectiveness in achieving the sentencing purposes of just punishment, deterrence, incapacitation, and rehabilitation;
- conducting theoretical, applied, and past practice research related to sentencing;

- serving as a clearinghouse for the collection and dissemination of information on Federal sentencing practices; and
- revising and adding to the guidelines as necessary.

All of these functions are interrelated and play a central part in the Commission's determination of the adjustments required in the guidelines. Particularly important to the guideline development and refinement process are the comprehensiveness and timeliness of our compliance monitoring, evaluation, and research efforts. If the problem identification, assessment, resolution, and decision-making processes are not well-informed, or they are not completed in a timely manner, the quality of the guidelines can suffer greatly.

The Commission is committed to fully implementing its multifaceted statutory mandate in the best possible manner. We have a very able and uncommonly dedicated staff. We are requesting increased resources in order to continue to uphold the high standards of quality and timeliness we set with the initial guidelines as we perform these ongoing, statutorily-required functions.

SUPPLEMENTAL APPROPRIATION REQUEST

Mr. **Smith**. On the supplemental, under the rules around this place we're not supposed to consider supplementals unless they are a dire emergency. Generally speaking, we determine if it's a dire emergency by whether or not it was a shortfall that was known at the time the appropriation was made. How does this qualify as a dire emergency?

Judge **Wilkins**. Well, I guess it is how you define it. Let me tell you where we are. I would say perhaps under that definition because it was not known. The reason it is not known—and I know you sympathize——

Mr. **Smith**. You say it was not known.

Judge **Wilkins**. Well, the magnitude was not known when I submitted the appropriation to you a year or so ago. As you know—and I hope you have an appreciation for this—we are a brand new agency. We started with seven commissioners, and we didn't even have a typewriter or an office or a piece of paper to write on. And we built this agency and met the congressional mandate of issuing these guidelines in a timely fashion. But we don't know what—I didn't know what it took in terms of resources, and I doubt if too many in this Congress knew exactly what it was all going to take. And so we start receiving these cases and we start monitoring and meeting the statutory mandate. And I have always held back and said we can do it with less people and less money. Now I see that we are doing now—we are working at about 25 percent of capacity in terms of the data we need to be collecting.

Mr. **Smith**. Go one step further. What will happen if you don't get the $700,000?

Judge **Wilkins**. Well, we will just do what we can do, which is about 25——

Mr. **Smith**. What will the harm be?

Judge **Wilkins**. Well, we won't have the information that we are supposed to have by statute. You see, in the early phases of guideline operation, and I say for the next three or four years of implementation of the guidelines, we learn a lot from monitoring. Because while I think the system is working well, there is room for improvement, and we learn each day. But we learn it not from classroom activity but from studying actual cases in the courtroom, judges wrestling with guideline problems and real facts. And so we can't make changes and amendments—and we are in the amendment process now—just on anecdotal information. If some judge writes us and says he had a problem in this case because of this, well, that's fine. We take a look at it. But we need to see a pattern of problems developing because, otherwise, we'd just be putting band-aids on the guidelines. And if we can only monitor 25 percent of the cases—and that was all we were able to do—then we lose that ability.

GUIDELINE AMENDMENTS

Mr. **Smith**. Well, are there going to be changes to the guidelines from now on, every year?

Judge **Wilkins**. Well, the Sentencing Reform Act envisions, I would say, about a six-year period of time, and we are now really only into the second year of full implementation. But as far as the statute is concerned, we are now in our third year.

Mr. SMITH. You anticipate changes, then, for at least three more years?

Judge WILKINS. Yes, sir. And we are in the process now of not only making some amendments, but we are also issuing for the first time organizational sanction guidelines to sentence organizations convicted of Federal crimes, which is a new thing that we are doing this year for the first time, probation revocation guidelines that we are required to do, as well as guidelines for revocation of supervised release. The reason we are doing it this year rather than last year is we just couldn't do any more than we did. And we didn't particularly need the supervised release guidelines because they follow periods of incarceration.

FLEXIBILITY IN SENTENCING

Mr. SMITH. Some judges say they need more flexibility, that if there isn't enough flexibility, they can't give a heavier or a lesser sentence that they think some cases justify. Do you still get that complaint?

Judge WILKINS. All the time.

Mr. SMITH. All the time?

Judge WILKINS. Yes, sir. Lots of times from district judges. I used to be a district judge, and I was somewhat skeptical about guidelines myself as a district judge because I knew the sentences I imposed were the right sentences, and the problems we had in the system were caused by some other judges. [Laughter.]

You see, most judges feel that way, and I am sympathetic with them. But I do say this: Number one, if you want more flexibility in the system, I think we need to look at the statute and change the statute.

Mr. SMITH. Well, some people think, too, that if you rob a bank in Iowa, you should not get a heavier sentence than if you robbed one in Massachusetts. Therefore, then, if you give heavier sentences in Iowa, they'll go to Massachusetts to rob the banks.

Judge WILKINS. Well, you know, that is a legitimate concern, and a local concern. That is, this crime is more serious in my area.

Mr. SMITH. Yes, that is the gist of it.

Judge WILKINS. But there is not much—that is one of the areas I don't think the Sentencing Commission can do much about, because, I think, Congress answered that question when it passed the Sentencing Reform Act, and said in effect, "We want a national standard to apply throughout the nation." Congress made those decisions Mr. Chairman. Also, I would point out that judges can depart from the guidelines, up or down; they just have to give a good reason for it.

Mr. SMITH. Now, what is the sanction if they do?

Judge WILKINS. If they depart?

Mr. SMITH. Yes.

Judge WILKINS. And it is not a good reason?

Mr. SMITH. Yes.

Judge WILKINS. Then the appellate courts send it back to the judge, and say "It wasn't a good reason. Sentence within the guidelines."

Mr. SMITH. I see.

Judge WILKINS. If it is a good reason, then the sentence stands, and I don't think it is too much, really, to ask us judges to give a reason for the decisions that we make, but the last thing that I want to say: on the guideline ranges, and this bank robber, if he were in Massachusetts, or Iowa, either one, he would fall within a sentencing range. The top part of the range exceeds the low by 25 percent, so there is a 25-percent maximum variance there by statute, and all the guidelines are written that way.

Mr. SMITH. Well, the complaint is that 25 percent is not enough.

Judge WILKINS. Well, I just don't believe there is a 25 percent difference between your bank robber in Iowa and Mr. Early's up in Massachusetts. I doubt it.

Mr. SMITH. Well, let's take two bank robbers in Iowa, then. There might be 25 percent difference between one compared to another.

Judge WILKINS. Yes, and if they were substantially different, they wouldn't fall within the same sentencing range. If one bank robber had a weapon and the other didn't, there would be entirely different sentencing ranges. If one had a prior criminal record, and the other was a first-time offender, the guidelines would put them in different categories. It just means all the bank robberies with the same characteristics in Iowa would fall within the same guideline as those bank robbers with the same characteristics in Massachusetts.

Mr. SMITH. But you have been a judge, and you know that you can't always use statistics or obtainable history to fully describe the defendants who are before you. I mean, you can tell by looking at some of those guys that they have done a lot of things that you don't know about, and this guy needs to be put away. Isn't that right?

Judge WILKINS. On a few occasions, I think that is true, Mr. Chairman, but I'm not sure that's the way our system ought to work. Somebody whispers to you going into the courtroom, "Judge, this is a bad guy."

Mr. SMITH. I'm not whispering to you.

Mr. EARLY. You are talking about southerners. [Laughter.]

Mr. SMITH. It is obvious that some people get by with very serious crimes for a long time, and continue to get by with crimes.

Judge WILKINS. And then, because he has a rap sheet, there is no disposition to a number——

Mr. SMITH. No, I'm not talking about a rap sheet, or anything like that. I'd list that, too.

I remember one time we were in before the judge—this is when I was in the prosecutor's office—and a policeman came in. He had a defendant on some case, and the judge said, "Has he got a record?" And the policeman said, "yes." I thought to myself, that is kind of strange. The defendant isn't the kind of guy who would have a record. I said, "What is it?" The policeman produced the record—he had shot a bee-bee gun inside the city limits a few years before.

You see? Those records are not included, but there can be a difference between criminals.

Judge WILKINS. Yes, there is, and I say again, there is flexibility in the guidelines. There is 25 percent, at least, built into the guidelines.

Mr. SMITH. You think the 25 percent is enough, then?

Judge WILKINS. I really do, sir. If we don't, you see, if we have it too much more than that—since we have done away with the parole system, and there is real-time sentencing—and you give a judge, let's say, 50 percent, then you are going to reintroduce this significant problem called unwarranted disparity.

Mr. SMITH. Well, has the Commission discussed this issue about whether 25 percent flexibility is enough?

Judge WILKINS. I don't think we have ever formally discussed it. In effect, I think the general feeling of the Commission is that it is sufficient.

Mr. SMITH. It is enough?

Judge WILKINS. Yes, sir. Particularly, it is not just the 25 percent. There are other ways, other things that the judge can do, within the guidelines, that can somehow affect the sentence, and if it is a bad case, where he—you just can't say, "I don't like the sentence, so I am going to give you ten more years," but the departure standard——

Mr. SMITH. Well, it might be on the light side, too, though. There might be some for whom you just say the circumstances are such that this is not an ordinary criminal. You have a lighter sentence than the guidelines provide.

Judge WILKINS. Well, if the judge can just make that conclusion, he has to come up with a reason that is a real reason, then he can do that, he can sentence below the guideline range.

Mr. SMITH. Mr. Rogers.

Mr. ROGERS. Well, the 25 percent variance is by statute, isn't it?

Judge WILKINS. Yes, sir.

Mr. ROGERS. So if a change is to be made, it is not your decision, anyway.

Judge WILKINS. That's correct. That is the maximum variation. We could limit the variation to less than 25 percent, the Commission could, but we can't expand it more than 25 percent, because of the statutory requirement.

Mr. ROGERS. So any change beyond 25 percent would have to come from the Congress?

Judge WILKINS. Yes, sir.

Mr. ROGERS. Well, you know, to guard against the thing that the Chairman just mentioned, about a defendant who just looks guilty, and I'm an old prosecutor, too, and I found myself guilty at times of, perhaps, inclining to be more tough on somebody who looks like a criminal, not based on the facts, but upon something more subjective, and that's not the way our system should operate. It should be objective.

Judge WILKINS. I think that was the intent of the Sentencing Reform Act, to push us to a system where it was objective, and intuition plays a relatively minor role.

Mr. ROGERS. That's right, and obviously, the Congress found that there was—I don't know what your legal term is—but there was disparity in the justice being given out geographically around the country, and so the reason for your agency's existence is fundamental, I think.

Let me ask you about your supplemental request; as you know, we don't have any room under our ceiling, and some agencies in our bill don't have their full funding yet. As you know, the Congress has told us, "you can't give anybody a supplemental unless it is a dire emergency," and those words are pretty strong words to me. I'm on the Budget Committee, where a dire emergency must be a pretty strong exception, and I just wonder if you, in Mr. Webster's definition of those words, can you really say that what you are asking is a dire emergency?

Judge **Wilkins**. No, sir. I can say that what we will have to recognize is that the work that we are required to do will not be done, and we will just miss——

Mr. **Rogers**. It would be nice to have it. It would be more convenient to have it. It would be a great positive thing to have it, but you can't say that the world is going to crash if you don't get it.

Judge **Wilkins**. Absolutely not. I will say that one of the problems that we have with judges sending us this material, because it is extra work for the court, it is extra work for the clerk of the court, and the probation office. They have to copy all this material together, and they have to mail it to us. Now, if we ever get on an automated system, that would be another story. But because we are only able to code and analyze about 25 percent of this, there is a feeling out there of "What's the use? We have only got one out of four chances that they are even going to look at the stuff we send them." So that's a problem.

But I must admit to you that this year, if we miss 75 percent of the cases during 1989 and 1990, we just miss them. We will pick them back up if we get the money.

Mr. **Rogers**. Well, I have got an idea that Mr. Early is going to follow up on that automation business, so I'll skip over that here. [Laughter.]

Judge **Wilkins**. That's why I kind of threw it out there, I figured he would. [Laughter.]

Mr. **Smith**. Before you leave, I would like to point out, as I should have before, that under our procedures, the cap has been reached for the total budget expenditures and outlays for the year. We would have to get a waiver before we could even consider a supplemental, and that is where we get caught with having to prove that it is a dire emergency. It is not whether or not we think that it is a good thing, we just get caught by our rules.

APPEALS OF GUIDELINES SENTENCES

Mr. **Rogers**. We were told this morning that a large portion, a large part, of the criminal appeals caseload increase is caused by the guidelines. In fact, Judge Arnold told us that the appeals caseload has increased by 55 percent in one year, from 1988 to 1989, due in great part to the sentencing guidelines. We knew they would cause an increase, but are you having any success in mitigating that increased caseload of appeals?

Judge WILKINS. Well, I don't have any reason to quarrel with the tremendous increase. I know that it is all happening around the country, but that is, again, a result of the Sentencing Reform Act, and the specific provision in the statute that gives this new right of appeal to defendants and the government. Now, defendants in the past, when they pled guilty, they would not have appealed. But now, a plea of guilty, even, can result in an appeal, because the defendant now has the right to say, "Well, this was an incorrect application of the guidelines, and I want an appeal."

So it is a statutory right that was granted, but what is happening, I think we are going to see, is that the number of appeals is going to peak and start going back down. Because all the courts of appeal now are handling new issues, brand new issues are being raised, and they are being resolved, and there are similar type issues coming along. I know, in the fourth circuit, we are now developing procedures so that these appeals can be summarily handled, if it is a repetition of the same issue that we decided as a full court the month before. So I think the number of appeals, they may still continue, but the amount of work to be given to each individual case will decrease as the courts develop the case law and precedent.

Mr. ROGERS. Well, as the process works, and a prosecutor makes a plea-bargain arrangement with a defendant, under the sentencing guidelines in practice now, and you have a prosecutor's deal with a defendant, has that arrangement got credibility with the courts under the sentencing guidelines? Because it seems to me if, in fact, that prosecutor is equipped with credibility to make a deal with the defendant, the likelihood of an appeal coming out of that goes way down, does it not?

Judge WILKINS. Oh, it does. I think the judge always takes account of plea negotiation.

Mr. ROGERS. Yes.

Judge WILKINS. In fact, the statute specifically provides that if there is a binding plea agreement, and the judge didn't follow it, then that is a basis for appeal.

Mr. ROGERS. Yes.

Judge WILKINS. But many sentence appeals involve cases where there is not a plea bargain. There is either a trial, or the defendant just pleads guilty, but he contests the application of the guidelines in one way or another. Most of the time it is a frivolous issue being raised, but, of course, in the initial offering of all this new law the courts have to deal with new issues for the first time. But you are correct, if there is a plea bargain and the court accepts the plea agreement, there is not an appeal. If it is not a plea bargain, then we see the appeal.

Mr. ROGERS. If it is an indigent defendant, he has got nothing to lose by appealing, has he? It is sort of like the old procedure to get out of prison—I can't recollect the procedure—but it was a free shot, right?

Judge WILKINS. Yes, it is. It is a free shot.

Mr. ROGERS. As long as it is a free shot, you are going to take it, aren't you, if you are a defendant?

Judge WILKINS. I would. It might strike.

Mr. ROGERS. That's right. How can we resolve that problem?

Judge **Wilkins**. Well, it is a basic issue. I mean, are we going to provide a lawyer to a defendant, as a matter of right, paid for by the taxpayers, on appeal? That is the issue. If we say yes, they are going to take the shot. If we say no, then that will significantly reduce the number of appeals.

Mr. **Rogers**. How can they say no?

Judge **Wilkins**. Now, if we say no, as a people, the Congress says we are not going to provide you with a lawyer on appeal, a free lawyer—I mean, that would be the Congress' decision. I doubt that that would ever come about, but I think as long as indigents are afforded free lawyers, and we pay for their transcripts, and everything else it costs to go to court, then defendants are going to exercise that opportunity and that right.

Mr. **Rogers**. It is like that old 1142 procedure. I don't know what it is now, but it used to be that, under Rule 1142, a defendant incarcerated was entitled to have a Federal review of his state incarceration, and I assume that that is still the case.

Judge **Wilkins**. Rule 2255, they changed the number.

Mr. **Rogers**. The courts were absolutely clogged with those appeals, and I assume they still are.

Judge **Wilkins**. Still are.

Mr. **Rogers**. Because they have a free shot.

Judge **Wilkins**. Yes, well, again, a lot of the free shots are taken, but the decision has already been made by the appellate court. I mean, there has been a prior case of a similar nature that has laid down the rule, and these cases that follow that one are going to be summarily handled. So while the number of appeals still is going to be large, certainly an increased number, the amount of actual time a court is going to have to spend, I don't think, is going to be, over time, reflected by this 55 percent increase in appeals.

But, every week, somewhere in this country, the appellate courts are deciding some guideline issue raised by a defendant, or sometimes by the government, because the government can appeal, as well, you see?

COURT CHALLENGED TO GUIDELINES

Mr. **Rogers**. Yes. Well now, are you still spending money defending the guidelines in court challenges?

Judge **Wilkins**. No, sir.

Mr. **Rogers**. You are not?

Judge **Wilkins**. No, sir.

Mr. **Rogers**. You are over that?

Judge **Wilkins**. Yes, sir, we are over it. We have got one or two little cases that have raised an issue or two. But nearly all the appellate courts, at least 11 out of 12, have rejected these issues. If we have an appeal raising new constitutional issues, we may have to get involved in that, but I doubt it.

Mr. **Rogers**. Okay, well I thank you very much.

Mr. **Smith**. Mr. Early?

DATA COLLECTION

Mr. **Early**. Thank you, Mr. Chairman.

Judge Wilkins, glad to see you back. The thing that I have been impressed with about you is that you have been flexible, you are not locked into everything. You know there is not perfect law, and you seem to be ready to change it as we find some of them, such as accepting that amendment. I really think that is the way to go. There are lot of things that you can implement based on what all the studies have shown us, rather than to do another study.

What I'm having trouble with in your testimony, is the statement that you got 1,200 reports last week, an average of 750. And how it takes you 90 minutes to extract from each report the data that you want. First of all, 82 percent did the sentences by the guidelines. Why do we have to even consider them? Why don't we take them and put them in another pile?

Judge **Wilkins**. Well, what we are finding, of course, is that some of those—that 82 percent—are being challenged. I mean, the judge had to make findings as to the appropriate guideline sentencing range and give specific reasons. So what we want to do is to look and see if judges are, one, finding facts, or manipulating the guidelines, as some out there say is happening. Did the judge say, in effect, in this case dealing with the use of a weapon, "Here is the underlying conduct. Here is a videotape that shows the defendant with a weapon in a bank." But yet, through some process, the judge in the finding of facts says, "There is no weapon involved in this case, and therefore, I am not going to sentence you as an armed bank robber, but only as a bank robber."

If we see that type of thing happening, then we have got to know about it, and try to do something about it, but to find that answer, you have to read the pre-sentence report, and then you have to read the statement of reasons or transcript of the sentencing hearing, and compare the two.

Mr. **Early**. We need to establish a database. I wouldn't think that you would go into each case so extensively. You had 1,200 reports last week. I just don't think that's practical, and I know that you are a practical man, and not the typical guy that comes up here who is all theory. If we had to nickname Washington, now, you could call it Pollsville. We poll everything. The pollsters would suggest that of the 1,200 reports you have got, you could probably take every fourth one and conclude is that abiding by the guidelines? Do you have a problem with that, and why would you have a problem with that?

Judge **Wilkins**. Well, you are correct, and that is a decision that I made and told Ms. Newton, you know, we can't do it all, so let's randomly select 25 percent of the cases coming through, and that is what we are doing now, because that's all we can do.

Mr. **Early**. Do you still need this type of personnel to do 25 percent, right now?

Judge **Wilkins**. No, sir, no. We wouldn't need that many to sample 25 percent. We are going to need more people, even if we sample, because we have got 21,000 cases to date, and we are going to have 40,000 by the end of October. So, I mean, the numbers are increasing, so the 25 percent of 40,000 is going to be a great deal more than 25 percent of 21,000, but here is what we do miss. What we do miss by sampling, unless we are able to look at the great majority of the cases that come through, Mr. Early, is to identify problems in less frequently occurring kinds of cases. One of the main things that we do is identify what we consider a difficulty of application of the guidelines. Either we pick it up because we can see it from the statement of reasons by the judge, who simply said I have got a problem here, and here is the reason why, and he tries to work around the problem. What we don't want to do is go in and say to the commission, "Here is a problem, we think, with this guideline," and we have got three cases where it was identified, because that is just an anecdotal type approach to it. What we need to do is show there is a significant pattern developing around the application of this one guideline. Then we know we have really got to do something, because, on the other hand, it may be the judge's fault if the problem occurs, but rarely. He may just not be familiar enough with the guidelines to apply them correctly.

Mr. EARLY. So you were an ex-judge when you say it might be the judge's fault?

Judge WILKINS. Ex-judge?

Mr. EARLY. Yes.

Judge WILKINS. Well, I doubt that they can take that one away from me, but perhaps if they could, they would.

Mr. EARLY. Heck no, they can't do that.

Judge WILKINS. In any event, that is what Ms. Newton impresses upon me, that we want to make decisions that are informed, and based upon the data and experience in the field. We tried to write the guidelines that way, using past experience, and now we want to improve them based upon application, but we have to do it with a series of cases. She informs me that, by doing various specialized studies, 25 percent is a scientifically sufficient sample. But if we want to really make a major change in the guideline, we need to see this one guideline being applied by different judges over periods of time, under different circumstances, before she feels comfortable coming to the Commission and saying, "We need to make a significant change in this guideline, and we have been able to study so many hundreds of cases in its application, and this is the problem that we have identified."

Mr. EARLY. Okay. Now on automation. I have problems accepting that it takes you 90 minutes to extract the needed data. Can't you get a one page summary on the first sheet that asks the ten questions that are going to go into your database?

Ms. NEWTON. We are working very hard on that. We have been working with the administrative office and with Judge Becker's Committee on Criminal Law and Probation Administration, on trying to get a statement of reasons, for example, on a one-page form, some computer-friendly document that we could easily code. But at the present, we are getting them in transcript form, 30 pages, 90 pages, 150 pages, and reading through those documents to try and find the reason for sentencing in a particular range or departure, and that takes an incredible amount of time. We don't imagine that the 90 minutes is going to be—that that is going to be true over the long run, due to the evolutionary nature of the guidelines.

Mr. EARLY. So you will try to change that to just extract what you need.

Ms. NEWTON. Absolutely.

GUILTY PLEA RATE

Mr. **Early**. Judge Wilkins, I'm really shocked that 89 percent used to plea bargain, and now with the sentencing guidelines, 89 percent still plea bargain. For the record, tell us why you think that figure is staying up there? I can't understand why when you have the mandatory sentence.

Judge **Wilkins**. I can tell you the reason that I believe accounts for this. Indeed, many of us believed before we wrote these guidelines, even when others said everybody is going to stand trial, that guilty pleas would not significantly decrease. The simple fact is that the marketplace has changed under the guidelines. It used to be you plead guilty because you went from 0 to 20 years. That was what the judge could give you, and so you want to go in there and move it towards 0 as best you can, and do anything you can.

Now, the marketplace has changed. Under the guidelines, there is a provision whereby a judge can offer, or give what we call "acceptance of responsibility." This is the defendant who comes forward, and is sincerely contrite, has tried to make restitution, return the fruits of the crime, is a person who has truly accepted responsibility for his or her criminal acts.

[Additional information follows:]

The point is, under the guidelines, there is still the opportunity to get a significantly reduced sentence in conjunciton with a timely guilty plea.

Mr. **Early**. Can you adjust the five-year mandatory sentence?

Judge **Wilkins**. No, sir. The judge can then say, all right, the guidelines put you at a level 16 for sentencing purposes, but because you have done this, and you have made restitution to your victim, I believe that you are sincere in accepting responsibility for your criminal conduct. I am going to reduce that by two levels. That is a level 14, so that person then can be sentenced within that level, and that is about a 24 percent reduction—potentially a 24 percent reduction—off of the sentence.

Mr. **Early**. When he does that, judge, does that throw him into the 18 percent that go by the book?

Judge **Wilkins**. No, sir. That throws him into a category of all defendants who had committed that crime under those circumstances and accepted responsibility for that crime.

Mr. **Early**. Which category do you put them into, do you put them into the 82 percent pile that agreed with the sentencing?

Judge **Wilkins**. Well, he is in the 82 percent pile. Now, he may be contesting some other aspect of the guideline system, and may do so on appeal.

Mr. **Early**. But the judge has the autonomy, or the flexibility, to take someone out of one category and put him into a lesser sentencing category.

Judge **Wilkins**. Yes.

Mr. **Early**. He can slip it 2 grades?

Judge **Wilkins**. Two grades or offense levels, as they are called. But that can potentially result in about a 24 percent reduction in the sentence. Now, under the old system, judges usually reduced a sentence somewhere between 30 and 60 percent if a fellow plead guilty over what they would have given him. The guidelines don't do that much. They provide an incentive, but perhaps not as much as some defendants got in the past. But there is still a significant benefit and so the marketplace has changed. Defendants take advantage of whatever they can take advantage of, in order to receive the best sentence.

AUTOMATED ASSISTANCE FOR GUIDELINE APPLICATION

Mr. **Early**. Judge, your computer system, ASSYST, what does that stand for?

Judge **Wilkins**. It is called ASSYST. It is an assistance program to—what does it stand for, Phyllis? [Laughter.]

Ms. **Newton**. Automated Sentencing—I don't know exactly—Information System.

Mr. **Early**. You are just trying to confuse us.

Ms. **Newton**. I know, I'm very confused myself. It stands for Automated Sentencing System.

Judge **Wilkins**. We don't have the word like this. I don't think the initials really work. It is a software system that we distributed to probation officers, and it is a way to apply the guidelines of using the computer, it takes you step through step with each case.

Mr. **Early**. But in your statement you said that we have 3,500 people in the system collecting data for the sentencing. I mean, they are doing so much training, how are they collecting all this data?

Judge **Wilkins**. Beats me. Beats me. [Laughter.]

But I tell you what, that's the FPSSIS database.

Mr. **Early**. That's what?

Judge **Wilkins**. The FPSSIS.

Mr. **Early**. FPSSIS?

Judge **Wilkins**. That's the AO's existing sentencing information collection system. That was created in order to provide a data bank in preparation for the creation of the sentencing guidelines, and so that was data that was collected on all the sentences, and given to the Administrative Office of the Courts, which we used—a great deal of which we used—in developing the sentencing guidelines. That system is being phased out, and, in fact, is only being continued at our insistence. But it will be discontinued shortly. There are 3,500 people in the field that gave some time each week toward recording that data and sending it to the AO's office.

Mr. **Early**. But we don't know how much time?

Judge **Wilkins**. I don't mean to say that. We ought to compare apples with apples, but you can see the magnitude of it.

Mr. **Early**. Judge Wilkins, from just listening here, I have a problem as far as sentencing—not a problem, but an observation.

Judge **Wilkins**. Yes?

SUPERVISED RELEASE

Mr. **Early**. On the Parole Commission, which we abolished—which I think was a mistake—it was a system that we probably would have had to change, because it wasn't working—but the personnel that were involved with parole were very competent people, you know? Now we are going to put people under supervised release. What is the difference, other than the semantics, between supervised release and parole?

Judge **Wilkins**. Well, the difference—the statutory difference—is that the parole was just a continuation of the sentence imposed by the court. The judge said nine years, as you know, and the Parole Commission decided to release the defendant after he served, let's say, three years. They continued the rest of that sentence under parole, and if an infraction occurred, then they would be sent back in for that portion remaining, up to nine years.

Supervised release is a sentence imposed at the time of sentencing by the sentencing judge. The judge says: "Under the guidelines, you are sentenced to 36 months. In addition to that, I sentence you to three years of supervised release." The 36 months is a real-time sentence. When the defendant is released, the defendant goes back to that same probation officer that he did under the parole system, but now the defendant is under control of the court, but under supervised release, and if an infraction occurs, that defendant is brought back before the sentencing judge, who sentenced that person initially, to decide whether or not to revoke it.

Mr. **Early**. I know that is one of the things under study, and I hope you—personally—do amend that. But I don't think we can keep adding functions on these judges, because we can't keep adding more judges. I really mean that, Judge Wilkins. You have been flexible, in my opinion, and I really think that if there is any group that has to automate, it is your agency. And if you can't break down that form, I don't think that the supplemental is going to solve the problem, if you are going to try to analyze all 1,200 or the 40,000 reports a year that you get. I think that you have to do some of them, one out of every four. And a summary sheet would really help.

I think that you keep making changes if it calls for changes. You are not locked into saying, well, we were right at the beginning.

Mr. **Smith**. Mr. Kolbe.

Mr. **Kolbe**. Thank you, Mr. Chairman.

Judge Wilkins, welcome.

Mr. Chairman, I guess truth in packaging, or truth in advertising, requires that, up front, I express the reservations that I have had about the commission before. Many of you may already know about that. I have met with Judge Wilkins in my office to talk about this. I have met with other commissioners, and gathered a great deal of data.

I have some real questions about whether a commission that was set up to establish guidelines for sentencing should continue in the kind of framework that it appears to be doing, and actually increasing its parameters very substantially. I want to make it clear that I support the idea of the commission. I was a supporter of creating a commission to develop guidelines for sentencing. I think it is something that is very much needed. Uniformity of sentencing is needed.

I support that. But I have to tell you, Judge, I have a real problem with you coming before us with a budget request that is 42 percent, when you add in the supplemental (not including the carryover funds), 42 percent above last year's appropriation. When we are talking about a commission that was established—at least Congress, I think, thought it was established—primarily to get guidelines for sentencing, and that work is primarily completed, and now we are looking at the monitoring and evaluation phase, and we have a 42 percent increase in the request.

I guess my first question that I would ask is, is your budget like the others in the Judiciary, that it is not reviewed by OMB or is this an OMB-supported request? It is not reviewed by OMB?

Mr. STEER. It is not reviewed by OMB.

GUIDELINES TRAINING

Mr. KOLBE. I didn't think so, but I didn't want to ask that question, but then I thought that the staff wasn't sure, either, so I didn't mind asking you a question here about it.

Let me go through and ask a few things that deal with some things in your statement. Mr. Rogers asked a few questions on the Judicial Center that was before you as to why we have both groups involved in the business of doing this training. Perhaps you might like to respond about that, as to why it is necessary to have both the Sentencing Commission and the judicial center doing this business of training people, judges and probation officers.

Judge WILKINS. Well, Mr. Kolbe, first of all, the statute gives us that responsibility, so this Congress has delegated—directed—this commission to be responsible for training of judicial officers, probation officers, and others involved in the administration of justice, so this is the first reason we got into it.

The second reason, the statute aside, it is the best way to handle it. We do work very closely with the FJC. For example, today new probation officers are gathered at a training site in Baltimore, Maryland, and the FJC is putting on a 2 or 3 day training program. We have three of our training officers from the Sentencing Commission over there today and tomorrow working with these new probation officers, because, quite frankly, as far as application of guidelines is concerned, not the substantive law that Judge Godbold mentioned—we do study that, of course, because it has a direct impact on our decisions—but training on how the guidelines work is something that is, indeed, a specialty. We have the expertise in our Sentencing Commission to impart the knowledge best to judges, probation officers, defense attorneys, federal defenders, and United States Attorneys, and that is what we do. So we work closely with them, but we are the logical ones to do it. Now, we spend between $500,000 and $600,000 a year on training, and we go to the FJC training sites. If it is a judge training program, either I go, or one of the other commissioners goes, or a high-level staff member can participate. If we are talking about Assistant United States Attorneys, we send out our training staff, the same with the public defenders.

But, for example, we will go to Phoenix, Arizona, and meet in an available courtroom for two days with all the probation officers in Arizona, and we will send three people out there, and we will have that kind of hands-on training, rather than some type of formal lecture, where people from many states gather. We have found that's the most advantageous way to train and have been very successful at it. I think that those who study the system say that the probation officers are probably the best trained officers on guideline application because of the work that we have done with them.

Mr. KOLBE. Well, if that is the case, and if the statute mandates that you do this, I don't have a problem. But a good share of their money, their training assistance, is going to this process. Why is it necessary that they be spending this kind of money on a duplicative effort? I don't understand the duplication.

Judge WILKINS. Well, there is no duplication. Judge Godbold is correct in stating that they have concentrated primarily on substantive changes in the law, and there are hundreds of cases from the appellate courts that have been decided in the last two years, and certainly it is increasing even today, that deal with the guidelines. They conduct legal workshops for judges, and that is where a great deal of the work of the FJC goes. We work with application of the guidelines, how the guidelines work under this fact scenario, and most of our work is done with probation officers, federal defenders, and Assistant United States Attorneys. We do participate in the judicial workshops, but they are more formalized and don't deal with the nuts and bolts as much, perhaps, as we do with the other areas. So it is just a question of whether or not you want to put all the training in one area. I don't think it would save any money, because it is not a duplication of effort. They deal with the substantive areas and matters of court procedure, we deal with the practical applications.

MONITORING INFORMATION

Mr. KOLBE. Turning to another area here, your statement says that the necessary data collection was previously performed by the Administrative Office of the U.S. Courts. Within the next few months, the Office will no longer collect the sentencing data. Why not?

Judge WILKINS. First of all, they are discontinuing it for the right reasons. The FPSSIS system was set up to provide sentencing information, primarily in anticipation of the creation of a sentencing commission.

So when we began to write guidelines, there would be some type of data out there about what the past world looked like. No one else had written federal guidelines before, and so FPSSIS collected a lot of information that we used in writing guidelines. Now the information that we need to collect has to be done in guideline language, it has to be done with a view toward the guidelines we wrote. FPSSIS was collected in a void. We didn't know what the guidelines were going to look like, and so now, that responsibility is being transferred to us, the Sentencing Commission, and there is no need to have a duplication of effort, for the AO to collect the same information we are going to be collecting.

Mr. KOLBE. So you are still, from what you told us, collecting—and from what I gather, going to Mr. Early's questions about the 90 minutes to put each one into the computer system—you are still just collecting raw data. You are just getting the case file, are you not?

Judge WILKINS. No, sir, we are getting the pre-sentence report that gives us what we call the real offense conduct that is so critical to operation of the guidelines. We get the judgment and commitment order, which gives the sentence, whatever it is—if it is probation, the conditions of probation—other alternatives to incarceration used, we get that; we get the plea agreement so we can see what is happening there in the interchange between the defense attorney and the United States Attorney, and we compare that with the real offense conduct; and then we get the statement of reasons by the judge if departures are being used.

Mr. KOLBE. You are getting all that in, though, in raw form, on pieces of paper?

Judge WILKINS. Oh, yes, sir. Yes, sir, I'm sorry.

Mr. KOLBE. What was the Administrative Office providing to you before?

Judge WILKINS. Well, they were providing none of that. What they were providing was things like—you see, they had their probation officers around the nation filling out a computer form that said, date, sex, age, and national origin, and the sentence given, and the crime, and the statutory offense of conviction, and those types of things. So what we were able to use was that raw data. So we could look at a particular type of case or circumstance, or at least for different statutory violations, and determine the average sentence. But that is about all FPSSIS was giving us. It also gave us a breakdown on things like race and sex, and so forth, which is nice to know, I guess, but really not important to guideline application.

Mr. KOLBE. So the information you were getting before did not take 90 minutes to enter into the computer?

Judge WILKINS. No, sir.

Mr. KOLBE. It was in a much more simplified form. Now you are getting much more information, and much rawer data, much more complex from which to pull out the information?

Judge WILKINS. That's correct. We get the raw data, and we have to analyze it and make some judgment decisions. You read a sentencing report, and it has a statement of facts, and you have got a plea agreement over here. Was there some circumvention, or was it in compliance with the Sentencing Reform Act? I mean, there is a judgment call to be made many times.

Mr. KOLBE. I won't dwell on the questions that Mr. Early has asked, but I think they were right on target. Let me just say that I am bothered by the fact that you have brought to us a budget proposal that suggests a 100 percent sampling, 100 percent of all the cases have to be entered in, in order to have the data that we need. There is no person that is in the business of statistical analysis, or polling, that would tell you that that is necessary, and I'm not sure that I heard the percentage you now think that you might be able to do it with. You said 25 percent.

Judge WILKINS. Sir, we are doing it at 25 percent now. We have a 5,000-case backlog. I don't believe—we can't continue to stay current even with 25 percent, because the absolute numbers of cases are going to continue to increase—as I say, we picked up 21,000 so far. We will have 40,000 by October.

Mr. KOLBE. Well, are you saying then that for 40,000 cases, you estimate comprehensive requirement of 29 work-years for coding and data entry, 36 work-years in 1991. Are these estimates based on only 25 percent of 40,000?

Judge WILKINS. That is based on 100 percent of 40,000 cases.

Mr. **Kolbe**. That is based on 100 percent.

Judge **Wilkins**. But again, I say——

Mr. **Kolbe**. But you are not even doing that.

Judge **Wilkins**. We can't do what we don't have resources to do.

NEED FOR FULL DATA COLLECTION

Mr. **Kolbe**. I understand. I guess I would like you to tell me why you thought it necessary to prepare a budget that went from 25 percent to 100 percent.

Judge **Wilkins**. Because I think that is the optimum goal that Congress set for this Sentencing Commission to have. We are the data collection agency for sentencing in the nation, the only agency doing it now. One, we are receiving a great deal of—there is concern expressed among judges, and I guess probation officers, but primarily the judges, who know they are sending us this material, and we are only looking at one out of four of the cases that they send to us. In fact, a judge from Massachusetts was concerned about it. He said, "You know, it is a lot of trouble to do this. Why are we going to send this stuff to you, and we have got one out of four chances?" And that chance is diminishing, because the more that come in, the less we can do.

And I think he has a good point. We want to encourage judges, and we have to do it just through a cooperative effort. There is no way I can make a judge from any other state do anything around here, to send us material; if they don't think we are paying attention to what they send they are not going to send it to us, so that is an important reason. I agree with you that to run a sample study on, let's say, something like recidivism, or something on deterrence, or crime control, we can do a 25-percent sample, but the 25-percent sampling capability is diminishing. It is going to be 20 percent, and it may be 15 percent unless we get some assistance. But I do believe that we ought to have the capability of analyzing almost, if not all, 100 percent. Because 40,000 cases is going to become 44,000 cases next year, and then, I guess, it is going to become 47,000 cases—and I don't know what this committee will do as far as appropriations are concerned—but we ought to have the capability of analyzing close to 100 percent of the cases for the reasons that I have tried to outline. At least in this initial few years of this application, we don't want to make changes that affect defendants throughout the nation, in effect, announce a national policy based upon a 25 percent random sample. I don't want to change something that is going to affect somebody's—significantly change these guidelines—unless I can say there is a real problem here in application of these guidelines, and we have looked at a majority, at least a majority of the cases involving that application issue.

I am sure I won't convince you, and I doubt that you will me on this point.

Mr. **Kolbe**. Congress makes all kinds of policy, in health care, in the judicial system, on less than full data. We cannot possibly have a hundred percent of the data to make those kinds of policy decisions. Not only is it ludicrous to suggest that that is the case, but it is ludicrous to suggest the kind of cost that would be involved in that. And I said I wouldn't dwell on this, but it is not necessary statistically. Gallup does not collect a hundred percent—does not survey a hundred percent of the people and then enter one-thousandth of one percent into the computer. They have a sample process that collects the data from one-thousandth of one percent. While I am not suggesting that is the percentage, but the sample data, you can collect the raw data, it seems to me, in a different fashion that you are suggesting perhaps ought to be done. But let me, if I might, go on.

Still with your statement, you referred to the GAO, a study that is required to be presented to Congress in 1992. That is the one that is statutorily required, is it not?

Judge WILKINS. Yes, sir.

GAO REPORT

Mr. KOLBE. I believe there is a study, at least preliminary, a study that is going on now by GAO. Is that not correct?

Judge WILKINS. They are going to give me their report tomorrow, and I believe we testify March the 7th before the Criminal Justice Subcommittee.

Mr. KOLBE. Right. My understanding is they are going to be giving it verbally. That is what I wanted to be sure of. That is not the same report you are referring to?

Judge WILKINS. No, sir.

CONTRACT RESEARCH

Mr. KOLBE. One other question. You were talking about the requirement of theoretical applied research and analysis, with a $311,000 increase for that in 1991. Why couldn't some of those be done by contract or by studies? That may not save us any money, but I am just wondering why we have to have the commission, the agency, do that. We do all kinds of judicial studies all the time that are contracted out to through universities or judicial centers of one sort or another. Why couldn't that be done that way?

Judge WILKINS. You know, we thought about that, and there may be some merit there. But we have rejected it. One reason—and this is not the major reason—but confidentiality is a problem. But I think that could probably be handled through some type of contract agreement with a private agency.

The other reason is that this is a very, very specialized area. I don't believe we can find anybody in this country today who could do the work that we are doing at our office here in Washington, period, because no one has the expertise. No one understands it. You just can't go out and hire XYZ Company that says they are willing to do it. They don't have people that can do it. We would have to spend a tremendous amount of money training them to reach the point where they are.

Now, these people that we have working for us and the people we would like to hire are not just clerks that can punch a button on a computer. They are pretty smart folks that go through an extensive training program with us so they can be experts in guideline application so they can recognize what they need to recognize when they extract this data. So it is such a process to go through to hire somebody from the outside that it just wasn't worth the effort.

Ms. **Newton**. May I interject one thing?

Mr. **Kolbe**. Yes.

Ms. **Newton**. In looking at the legislative history of the Sentencing Reform Act, too, it talks very specifically about wanting to set up an agency that looked at the whole gamut of sentencing, including research; an agency that focused solely on this very important, critical area. And it talks very seriously about the agency setting up a means of looking at these issues.

Mr. **Kolbe**. Mr. Chairman, since I passed on the last two, will you indulge me for another minute or two?

Mr. **Smith**. Yes.

COMMISSIONER VACANCIES

Mr. **Kolbe**. The number of vacancies on the Commission. It is a seven-member Commission. You currently have how many vacancies?

Judge **Wilkins**. Three.

Mr. **Kolbe**. Three. One judge and two non-judges?

Judge **Wilkins**. That is correct.

Mr. **Kolbe**. As I recall, the statute creating the Commission requires a majority vote of four for the guidelines. Do you interpret that to mean, then, that currently you would have to have a unanimous vote to adopt any guidelines? Or do you go by a majority of the current members?

Judge **Wilkins**. The statute says four. My interpretation is we've got to have four out of four right now.

Mr. **Kolbe**. So you have to have a unanimous vote.

Judge **Wilkins**. That is right.

Mr. **Kolbe**. Is that causing a significant problem?

Judge **Wilkins**. No. George, Helen, and Commissioner Nagel, who could not be here today—I think we get along so well that we seldom have disputes. But, no, it is a potentially significant problem because it means that one commissioner, either me or anyone here, can really hold up the whole process and hold the rest of us hostage. I do not suggest we will do that, but that is not the way we ought to operate. I have stressed and stressed to the Department of Justice and to the White House that we need to have these Commission vacancies filled. I do know the White House has announced one new member. It is pending now in the Senate Judiciary Committee for confirmation hearings. The other two positions, I am informed, are close to being announced. But I don't know who they will be, and I don't know when they will be announced.

Mr. **Smith**. One Senator could hold up everything in the Senate.

Mr. **Kolbe**. That is true. I realize that.

Judge **Wilkins**. It is a serious concern. I would appreciate your help if you could urge them to go ahead and do something.

Mr. **Kolbe**. One more vacancy, and you are going to be in real trouble getting four votes.

Judge **Wilkins**. Well, we won't do anything if we have one more vacancy. That is right. We can do anything by majority except promulgate a guideline or amendment. But that is the process we are in right now, and that is the critical stuff, anyway.

Mr. **Kolbe**. Okay. Judge, you also carry a caseload from court?

Judge WILKINS. On the fourth circuit I do.

Mr. KOLBE. Do the other judges that serve do that?

Judge WILKINS. Well, we do not have but two of us serving now. Judge Breyer on the First Circuit, before his term expired in October of last year, did carry a case load. Judge MacKinnon is a judge on the special panel for appointment of independent counsel. Other than that, Judge MacKinnon devotes all of his efforts to the Sentencing Commission.

Mr. KOLBE. Does it bother you at all that you have created essentially two classes of commissioners; one that works full-time at being the commissioner and one that works and has to be part-time. I mean, I am not suggesting you do not work extra hours and you do not work doubly hard at your job. But the fact is that to carry a case load and then be a commissioner means you cannot devote the same amount of time to the job of being the commissioner that one of the non-judge commissioners does. Have we not created two classes?

Judge WILKINS. No, sir.

Mr. KOLBE. No?

Judge WILKINS. We may have. You can define a class any way you want.

Mr. KOLBE. Well, I mean——

Judge WILKINS. Does it give me any problem? I would answer no, sir; it does not give me any problem.

Mr. KOLBE. If you believe you can do the job on a part-time basis; and I have to conclude—you are carrying a case load—you do view the Sentencing Commission on a part-time basis. Why would that not apply to the non-judge members?

Judge WILKINS. Well, I do not view it as a part-time basis. I do not accept that as my statement. All of us commissioners, judges and non-judges, work for the judicial branch of government, and that is the master I serve, whether I am handling court or commission duties.

I think the fact that I do carry a case load does not mean I am giving less than full-time effort to the Sentencing Commission; it is a reduced case load. I am not sitting, for example, next month because we have pressing amendment business. I devote my first priority, as did Judge Breyer and as does Judge MacKinnon, to the work of the Commission. And we do work extra hours and extra days and extra weekends, and all those things, just personal commitments and sacrifices that we have made.

But I think, number one, it was envisioned, at least in the Senate, that the judges would not give up entirely their case load, and the legislative history bears that out. Number two, it is very important that we are involved in the judicial activities of the courts, because we are seeing, and I see when I sit, the guidelines cases coming through the courts. I am sitting on cases where these problems are raised. And so it is very beneficial for me to come back to the Commission and not just talk about something I heard about. But in the flesh, I can discuss things I have seen about the guidelines.

And number three, the commissioners all bring various expertise to the Commission, and I think that is why we were selected and appointed. The judges are in one category. But Commissioner Corrothers, for example, under my direction and at my request, is chairing a very important project with noted experts around the country on alternatives to incarceration.

And so, she is doing that for the Commission. Commissioner Nagel is now involved in a process of analyzing plea negotiations. She and Professor Schulhofer from the University of Chicago, who is working on a contract basis with the Commission, are analyzing what is happening with plea negotiations to determine whether the U.S. Attorneys are following the Attorney General's memorandum. Are they following their own guidelines? Are they following our policy statements on plea negotiations, or are they circumventing them?

So I mean, those are the kind of activities we have going on. Commissioner Block, before he left the Commission, at my request—he agreed to do it—headed up an exhaustive study of corporate sanctions. And so, these folks have expertise in fields that we need to use, and so far, it has worked out fine. I think the proof is in the pudding, and the proof is that these guidelines have been promulgated against a lot of odds, I might add, and others who did not think it would work. And the time table was very short, but all those things worked out. And now the guidelines are in effect and working.

Mr. KOLBE. Then it would be a fair conclusion from that to say that you see your role primarily as one of dealing with and voting on these guidelines themselves, and the other commissioners, the non-judge commissioners—their responsibility is to direct the research, the ongoing research?

Judge WILKINS. Not a bit. That is not the way I view it, and that is not the way I have acted.

Mr. KOLBE. Well obviously, they also vote on the guidelines, but they also have the added responsibility of directing the research?

Judge WILKINS. Well they do not direct the research. Commissioner Corrothers is directing and chairing a group of people who are looking at specific issues on sentencing alternatives. Norm Carlson is the outside co-chair. She and Norm are co-chairing this group of people to study alternatives to incarceration. And I mean, we are trying to look at viable, meaningful alternatives to incarceration. So if the guidelines call for imprisonment, we may say we can find an equally good punishment that is something other than incarceration. But that is what we are trying to do. I just use that for an example.

But I believe the commissioners should function in a hands-on manner. I mean, I think we ought to be deeply involved in everything that goes on and should not be spoon fed things by the staff. We are talking about people's liberty—I would no more delegate the drafting or revision of a guideline that is going to direct somebody to go to the penitentiary than I would give an assignment to my law clerk to go in the courtroom and sentence somebody.

Mr. KOLBE. All right. Are you working on some of those studies that you just mentioned, yourself and those that you are directing? Any of those——

Judge WILKINS. Well, I am not working on those. I receive preliminary reports, and we will receive a report from the Commissioners on both of those. I am working hands-on with corporate sanctions right now; all of the commissioners are wrestling with that. And I am writing some proposals that I am going to be distributing to the other commissioners soon for their review, and they will probably be sending me some.

I might add, too, Mr. Kolbe, you know, I was in the office all day yesterday, and I saw Commissioner Corrothers and Judge MacKinnon once in the hallway, but I probably talked to them half a dozen times. We talk on the telephone, and we use fax machines and we use all those means of communicating. The fact that I may be physically in Washington, or Helen Corrothers may be at some meeting or somewhere, does not mean that we are not in constant communication with each other in discussing problems and trying to work together to form a consensus to really tackle issues and continue to do what has proved to be a very difficult job.

Mr. KOLBE. Mr. Chairman, I have some other questions relating to some staff positions that I will submit in writing for the record. But let me just say in conclusion, Mr. Chairman, that I still remain concerned about this. I would make a prediction that based on what we have seen here today that anybody on this committee who thinks this Commission will expire at the end of its term in three more years, I think that is very doubtful. There will be a request to continue it. We are seeing a very large agency being created here at this time.

Judge WILKINS. Mr. Chairman, let me just—I know you just did not mean to misspeak, Mr. Kolbe. The statute never envisions this Commission expiring in three years. It is a full-time permanent Commission as long as sentencing guidelines are a reality. It does say that at the expiration of six years, that all the commissioners other than the chairman will go into a part-time status, but the Commission itself is an ongoing permanent agency in the Federal Judiciary.

Mr. SMITH. Mr. Early?

SENTENCING OUTSIDE THE GUIDELINES

Mr. EARLY. The 18 percent that differed from the sentencing guidelines. You said they go to where, an appeals judge?

Judge WILKINS. Not necessarily. They very likely will. Well, six of that percent are substantial assistance departures, the guys that cooperate and testify, so they will not go. They are in the witness protection program.

Mr. EARLY. Okay, so they——

Judge WILKINS. So you've got three percent being sentenced above the guidelines, and most of those defendants appeal, of course. The government selectively appeals some of the nine percent of cases in which the court sentenced below the guidelines.

Mr. EARLY. From your Sentencing Commission, are they going to another step to be evaluated? Or do we accept what the judge did? I do not have any problem with that.

Judge WILKINS. Well, that is right. We have to accept what the judge did. We may disagree with the judge and then maybe use that to change the guideline.

Mr. EARLY. Fine. That also addresses flexibility and autonomy. Final thing, Mr. Chairman. I am really delighted to hear that Norm Carlson is working with you. I mean, you cannot substitute for his experience.

Judge WILKINS. Right.

Mr. EARLY. Do you think that the Commission might find a particular crime where you might change the sentences; that it would be house arrest or electronic type of monitoring?

Judge WILKINS. I believe it is extremely likely that that will occur. And I think it may be the right thing to do, but I think we are also looking at the limited resource of prison space, and we need to make room for the bad guys, and maybe we can move some of the other individuals into some other alternative.

The guidelines have some flexibility at the low levels—now, for that—today. But I think we need to expand that, and what we asked from Commissioner Corrothers and Norm Carlson is to tell us how best to do it.

Mr. EARLY. Do you think that you might say in your last year we can put them in an electronic monitoring program?

Judge WILKINS. I think we could. I think we do have some of those cases.

Mr. EARLY. Are you looking at it?

Judge WILKINS. Yes, we are looking at it, and I hope we can coordinate the effort so that when we say that electronic surveillance is a viable alternative under the guidelines, that we can work with the AO's office and Congress so that there will be appropriations for that electronic monitoring in the field when the guidelines allow for it.

It would not be much help for us to say it if we do not have the ability to do it, but that has to be worked out. I hope we can—at least I know I plan to try to do that, and I think other commissioners feel the same way.

Mr. EARLY. I appreciate the Commission's flexibility.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much.

Judge WILKINS. Thank you very much, Mr. Chairman.

[The following questions were submitted to be answered for the record:]

Questions Submitted by Congressman Smith

FY 1990 Supplemental

QUESTION:

You request a Supplemental Appropriation of $700,000 for the Commission in FY 1990. Would you please describe the need for these additional funds?

ANSWER:

The fiscal year 1990 supplemental request is needed to enable the monitoring staff to complete development and implementation of a data collection system that will monitor compliance with the guidelines, to process the growing number of cases since the Supreme Court's Mistretta decision, and to analyze these statistics to best serve the needs of the Congress, the Commission, and the criminal justice community. The number of defendants sentenced under the guidelines has increased at a rapid rate. Since the Mistretta decision, over 21,000 defendants were sentenced under the guidelines. In fiscal year 1990, we expect close to 38,000 defendants to be sentenced under the guidelines, and in 1991 that figure should rise to approximately 43,000 defendants. The significant increase in cases that will be submitted to the Commission for compliance monitoring, coupled with the current backlog of cases, has resulted in the Commission's request for an additional 13 workyears in the fiscal year 1990 supplemental.

In order to accomplish the full scope of the statutorily-required impact evaluation of the sentencing guidelines, we are requesting 2 additional workyears in the fiscal year 1990 supplemental. These staff are needed to code, enter, and analyze data that would not be a part of the regular monitoring database but are necessary to the evaluation.

In addition, a small increase of 2 workyears in legal staff is required to review and analyze the court decisions related to guidelines application and departures from the guidelines.

QUESTION:

The Congress fully funded your original request in FY 1990 for 14 additional personnel, what has changed since that request to warrant the additional positions?

170B

ANSWER:

While the Congress allowed the increase of 14 workyears, it did not fully fund our fiscal year 1990 request. The request was cut by approximately $500,000 in the appropriation process and further reduced by $75,000 due to the sequester permitted under P.L. 99-177. In addition, circumstances have changed significantly since we put our original 1990 estimates together. First, the Supreme Court affirmed the constitutionality of the Commission, the sentencing guidelines and the Sentencing Reform Act; this greatly increased the number of defendants to whom the guidelines are being applied. Second, the Administrative Office of the U.S. Courts, appropriately we believe, decided to discontinue their sentencing data collection system. Third, with the additional year's experience of guideline application and requests for sentencing information to support research, evaluation, and guideline refinement efforts, we have a better idea of how comprehensive the database should be. In fact, the Commission has been strongly urged by members of the Federal Judiciary and others to make its database more comprehensive. The data generated from the Commission's monitoring system is critical to assessing compliance with the guidelines, the accuracy of guideline application, and their effectiveness. Due to the changes in circumstances cited above, we have found that this task requires greater resources than initially projected. Extraction of the required sentencing data from the multi-document reports sent to the Commission on each case is extremely time consuming and will necessitate an increased commitment of Commission resources.

QUESTION:

What would be the impact on the Commission if consideration of these additional positions was delayed until the FY 1991 appropriation bill?

ANSWER:

First, our ability to supply current, comprehensive sentencing information to the Congress, the criminal justice community, and the Commission in a timely manner would be significantly impaired. Second, the current backlog of cases to be entered into the monitoring system's database would increase significantly.

Personnel Increases

QUESTION:

For fiscal year 1991 you request a total of $1,453,000 for 37 new positions above the number for which funds were appropriated in FY 1990. According to your testimony, the majority of these positions are required for collection of data on cases sentenced under the guidelines. Is it true that these collections were previously performed by the Administrative Office of the U.S. Courts and other court personnel? Why does the AO plan to halt their data collection efforts?

ANSWER:

The Administrative Office of the U.S. Courts' Federal Probation Sentencing and Supervision Information System (FPSSIS) was designed to aid in the drafting of the original set of guidelines. As such, FPSSIS collected and compiled only a small portion of the case information necessary for monitoring application of guidelines sentences that the Commission is required to collect in order to meets its statutory mandate. The Commission's monitoring system is designed for use with the guidelines and will serve as a more comprehensive source of federal sentencing information. The Commission's database will include information such as the type and length of sentence ordered, guideline factors, a defendant's criminal history background, and departure status. FPSSIS was created in anticipation of the establishment of the U.S. Sentencing Commission and the guidelines and as a result, it is not structured along the same lines as the Commission's guidelines. This makes the sentencing portion of FPSSIS unusable for most Commission research and monitoring purposes, except for certain very basic information. In order to overcome these serious shortcomings and to avoid any duplication with the Commission's data collection effort, the Commission concurs in the decision by the Administrative Office to discontinue the sentencing data portion of FPSSIS.

QUESTION:

How long do you plan to continue these collection activities?

ANSWER:

The Commission was statutorily-mandated by the Congress to develop guidelines for the federal court system and periodically revise them as necessary . It is further mandated to create a comprehensive program of research combining data collection and evaluation of guideline sentencing with basic and applied research. Of paramount practical concern is the use of sentence monitoring information and related research to assist the Commission in recommending annually to the Congress necessary amendments to the guidelines. The data collection effort is a permanent, ongoing task designed to inform the Congress, the courts, and all interested parties.

QUESTION:

For each of the categories of Commission functions (e.g., legislative activities, sentencing monitoring, etc.), please provide for the record the number of positions for

FY 1989, 1990 enacted, 1990 supplemental request, and 1991 request.

ANSWER:

This table is based on positions, as requested, and equates workyears with full-time permanent positions. The data for FY 1989 has been adjusted to reflect the changes in organizational units that occurred early in FY 1990.

U.S. Sentencing Commission
Positions

	FY 1989	FY 1990 Enacted	FY 1990 Supplemental	FY 1991 Request
Commissioners/ Staff Director/ Administration/ Communications	24	28	28	31.5
General Counsel	8	13	15	17.5
Training/Technical Assistance	5	5	5	5
Research	28	37	52	66
Monitoring	(12)	(19)	(32)	(36)
Evaluation	(7)	(8)	(10)	(14)
Studies	(6)	(5)	(5)	(10)
TOTALS	69	83	100	120

Part-time Status of Commissioners

QUESTION:

Last year, an issue arose before the Committee concerning the advisability of converting Commissioners from full-time to part-time status before the statutorily mandated date of 1993. What is the status of this issue?

ANSWER:

On March 7 of this year, the House Judiciary Committee's Subcommittee on Criminal Justice held a hearing that, in the Subcommittee Chairman's words, was intended to "explore" whether the Sentencing Reform Act should be amended to provide for part-time membership on the Sentencing Commission prior to 1993, the date now set by law. Judge, and Sentencing Commission Chairman, William W. Wilkins, Jr., testified on behalf of the Commission that a switch to part-time at present would offer little cost savings but would significantly impair the Commission's ability to achieve the results Congress had

170 E

in mind when it passed the Sentencing Reform Act. Two other witnesses, Judge Edward R. Becker (testifying on behalf of the Judicial Conference of the United States) and Joe B. Brown (testifying on behalf of the Department of Justice), presented testimony generally supportive of the Commission's position. One witness testified in favor of an immediate switch to part-time. This testimony was presented by former Commissioner Michael Block, who resigned from the Commission last year to resume teaching at the University of Arizona School of Law and Economics. The Subcommittee has taken no further action on this matter.

QUESTION:

Does the Commission have a position on the advisability of Commissioners going to part-time status in FY 1993 and, if so, are you discussing any possible changes with the authorizing Committee?

ANSWER:

The Commission has neither discussed with the authorizing Committee nor taken up for consideration the advisability of the 1993 part-time date, and the Commission has no present plan to seek any change in the statute in this regard.

170 F

QUESTIONS BY MR. KOLBE

Staff Vacancies

QUESTION:

How many staff vacancies does the Sentencing Commission currently have? What are they? How long have they been vacant (please state time for each vacancy)? Classify which vacancies are key positions. Please chronicle what adverse effects these vacancies have had on the operation of the Sentencing Commission? What problems has the Commission encountered in filling these positions? When do you anticipate the key vacancies will be filled?

ANSWER:

The following is a list of the current staff vacancies in full-time permanent positions at the Commission, along with an indication of when the positions became vacant or were created.

Position	Date of Vacancy
Secretary to Commissioner	2/88
Secretary to Commissioner	9/89
Research Director	5/88
Associate Research Director-Evaluation	11/89
Senior Research Associate-Evaluation	1/90
Senior Research Associate-Studies	12/89
Senior Research Associate-Studies	1/90
Research Assistant-Monitoring	3/90

Nearly all of these positions are key to the organization, and we are actively recruiting for 6 of the 8 vacancies. We expect all 6 of these positions to be filled in the next 4 to 6 weeks. The other 2 vacancies--secretaries to Commissioners--will become key vacancies at the time new Commissioners are confirmed.

Following the resignation of the Commission's first research director, the Commission consciously decided to attempt an alternative management structure in its research office. The statute directs the Commission to conduct three distinct types of research: monitor and report on sentencing practices, evaluate the impact of guidelines on several aspects of sentencing practices, and perform long-term research designed to add to the base of criminal justice knowledge in the sentencing area. Following eighteen months of a structure using two associate research directors and upon the recommendation of these two associate directors, the Commission decided to create a management and sub-management structure within research. The extent of staff required to accomplish each of the important tasks of research requires additional supervision; however, a single head of the office is required to ensure continuity within the office. The Commission recently offered the research director position to an experienced and respected researcher. That individual has accepted the offer and will begin employment during the first week of April 1990.

Training Officer

QUESTION:

Please describe the status and situation involving a probation officer on detail from South Carolina who is serving as training director. What was this person's position in South Carolina? What is the circumstance of the special detail? How long has this individual been on detail to the Commission? Is this a full-time position? Is this salary covered by the Commission? Does this person continue as a probation officer in South Carolina? Has a per diem been paid to this individual from South Carolina during this detail?

ANSWER:

A U.S. Probation Officer whose permanent duty station is in South Carolina is on detail to the U.S. Sentencing Commission as a result of an agreement with the Probation Division of the Administrative Office of the U.S. Courts, which continues to pay his salary. Such arrangements are specifically authorized under the Commission's governing statute. This individual serves the Commission as a training consultant and reports to the Commission's full-time Director of Training and Technical Assistance. His association with the Commission began in November 1985 and has been extended in an incremental fashion due to the unique combination of his practical knowledge and training skills.

Since this person is on temporary duty status with the Commission, he is entitled to be reimbursed for the transportation, subsistence, and other costs he incurs while away from his permanent duty station in South Carolina. Much of his time is spent in training programs around the country or in traveling from one location to another. The per diem he is afforded while in Washington, D.C., is necessary to cover his living expenses while away from his South Carolina home.

This individual is a particularly gifted trainer, with a background of extensive experience in the federal criminal justice system. His work as a probation officer brings him into daily contact with federal judges, assistant U.S. attorneys, defense attorneys, and other probation officers. His widespread experience with and ability to communicate with representatives at all levels of the federal criminal justice system and his continuing service as a probation officer give this agency unique access and credibility in training situations not easily duplicated by our own employees. In addition to serving as the Commission's principal training specialist, he has provided invaluable assistance in drafting guidelines for revocation of probation and supervised release. In summary, this arrangement decidedly furthers the work of the Commission in a cost-effective manner.

WITNESSES

Page
Butler, R.A ... 63
Carroll, J.R ... 25
Chamlee, Don ... 85
Crupi, Emanuele ... 25
Donnelly, Tony ... 1
Ensign, W.L ... 25
Franklin, H.M ... 25
Gindhart, F.X ... 63
Godbold, Judge J.C ... 391
House, Toni ... 1
Karam, R.A ... 341
Lombardi, Joseph ... 43
Markey, Judge H.T ... 63
Mecham, L.R ... 85, 341
Newton, P.J ... 423
Nihan, C.W ... 391
O'Connor, Justice S.D ... 1
Raines, W.F., Jr ... 25
Re, E.D ... 43
Scalia, Justice Antonin ... 1
Steer, J.R ... 423
Stoorza, E.L ... 85, 341
White, G.M ... 25
Wilkins, Judge W.W., Jr ... 423
Wong, Alfred ... 1
Young, W.G ... 85

INDEX

Supreme Court of the United States

Page
Budget Justifications 1
Capital Cases 20
Caseload 16
Death Penalty Cases 17
Decrease in Paid Petitions 19
Diversity of Citizenship 19
Fiscal Year 1990 Funding 16
Impact of Drug Cases 17
Introduction 2
Questions for the Record 21
Reducing the Court's Workload 18
Statement of Justice O'Connor 13

Supreme Court, Care of the Buildings and Grounds

Increases Requested 38
Judiciary Office Building 38
  OMB Scorekeeping 38
  Financing Method 40
Justification Material 26
Opening Statement 32
  Prepared Statement of Mr. White 33

United States Court of International Trade

Budget Justification Materials 44
Verbal Statement (Judge Edward D. Re) 52
Prepared Statement (Judge Edward D. Re) 54
Caseload 57
Court Reporters 57
Questions Submitted by Mr. Smith 59
Questions Submitted by Mr. Dwyer 61

United States Court of Appeals for the Federal Circuit

Budget Justification Materials 64
Verbal Statement (Judge Howard T. Markey) 72
Additional Positions 72
Comments on Fed. Court Study 72
Space Rental 73
Prepared Statement (Judge T. Markey) 75
Judge's Pay Increase 75
Judiciary Office Bldg 75
Judge Markey 75

Page
Questions Submitted by Mr. Smith 80

Courts of Appeals, District Courts and Other Judicial Services

Budget Justification Materials 86
Prepared Statement (Judge Richard S. Arnold) 251
Verbal Statement (Judge Richard S. Arnold) 282
Probation Services 282
Judiciary Office Building 282
Court Security 283
Off-Site Security 287
Judiciary Automation Fund 289
Automation 289
Electronic Mail 289
Integrated Case Management System 291
Probation Automated Case Tracking System 291
Sentencing Guidelines 293
Computerized Courtroom 293
Sequestration 295
Fiscal Year 1990 Supplementals 296
Registry Fund Fee 297
Bankruptcy Fees 297
Supplemental Request 297
Reserve Funds 298
New Fees 299
Caseload 299
Drug Cases 300
Civil Caseload 300
Case Tracking 301
Arbitration 301
Automation 304
Space Alteration 304
Home Confinement 305
Asset Forfeiture Fund 305
Electronic Monitoring 307
Asset Forfeiture Fund 308
Crime Victims Fund 309
Judgeship Vacancies 312
Judge's Pay Raise 313
Questions Submitted by Mr. Smith 315
Questions Submitted by Mr. Early 334

Administrative Office of the United States Courts

Budget Justification Materials 342
Verbal Statement (L. Ralph Mecham) 350
Prepared Statement (L. Ralph Mecham) 351
Budget Request 358
Management Initiatives 363
Court Automation 372
Executive Level Pay Plan 378
Reception and Representation Expenses 378
Workload Projections 379
GSA Policy 379
Automation 383

Page
Staffing 383
Training Centers 384
ADP Modernization 384
Courthouses 385
Questions Submitted by Mr. Smith 387

Federal Judicial Center

Budget Justification 392
Prepared Statement (Judge John C. Godbold) 403
Verbal Statement (Judge John C. Godbold) 406
Workload 406
Training Funds 406, 409
Sentencing Guidelines Training 408
Questions Submitted by:
  Mr. Smith 413
  Mr. Kolbe 420

United States Sentencing Commission

Budget Justification Materials 424
Verbal Statement (Judge William W. Wilkins) 438
Prepared Statement (Judge William W. Wilkins) 441
Supplemental Appropriation Request 460
Guideline Amendments 460
Flexibility in Sentencing 461
Appeals of Guidelines Sentences 464
Court Challenges to Guildelines 466
Data Collection 466
Guilty Plea Rate 469
Automated Assistance for Guideline Application 470
Supervised Release 470
Guidelines Training 472
Monitoring Information 473
Need for Full Data Collection 475
GAO Report 476
Contract Research 476
Commissioner Vacancies 477
Sentencing Outside the Guidelines 480
Alternatives to Incarceration 481
Questions Submitted by Mr. Smith 482
Questions Submitted by Mr. Kolbe 487

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